REGD. GOA - 5

Panaji, 16th March, 2000 (Phalguna 26, 1921)

SERIES II No. 51

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/5/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Labour).

Panaji, 29th April, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/26/92

Shri Pratap Vernekar ... Workman/Party I

v/s

M/s Vagator Beach Resort ... Employer/Party II

Workman represented by Adv. P. B. Devari.

Employer represented by Shri C. J. Mane.

Panaji, Dated: 16-4-93.

AWARD

In exercise of the powers conferred by clause (d) of sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by its order No. 28/5/92-LAB dated 26-3-92 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Vagator Beach Resort, Vagator. Bardez, Goa, in terminating the services of Shri Pratap Virnekar, cashier, with effect from 31-3-1991 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of this reference, a case at No. IT/26/92 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings which can be found at Exb.4, 5 and 6. On considering the pleadings, I framed the necessary issues at Exb.7 and thereafter the matter was posted for hearing. Party I-Workman examined himself and thereafter the case was adjourned. However, on the adjourned date it was submitted that the dispute between the parties has been settled by an amicable settlement and accordingly an application to that effect has been filed at Exb.9. The same is duly verified. In the said application it has been stated that the case has been amicably settled between the parties and as such no dispute survives. In view of this state of affairs, it has been submitted that the reference should be disposed off. I, therefore, pass the following order:

ORDER

The reference stands disposed off as the dispute is settled out of Court with no order as to costs.

Government be informed.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/47/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Labour).

Panaji, 29th April, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/44/91

Shri Subhas R. Barreto ... Workman/Party I

v/s.

M/s Tarkar Automobiles Pvt. Ltd., ... Employer/Party II

Workman represented by Shri Raju Mangueshkar.

Employer represented by Adv. Shri P. K. Lele.

Panaji, Dated: 15-4-93.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/47/91-LAB dated 22-10-1991 has referred the following issue for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Tarcar Automobiles Pvt. Ltd., Panaji, in terminating the services of Shri Subhas R. Barreto, Peon, with effect from 12-6-90 is legal and justified?

(2) If not, to what relief the workman is entitled?"

2. On receipt of this reference a case at No. IT/44/91 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings, which are at Exb.4, 5 and 6. On considering the pleadings, I, framed the necessary issues at Exb.7. Thereafter, the matter was posted for recording of evidence. However, on 20-2-93, it was submitted by the learned Advocates for both the sides that there was every possibility of arriving at a settlement between the parties and hence the evidence could not be led. Finally on 26th March, 1993 both the parties appeared and submitted that the claim was settled and accordingly they have filed the terms of settlement which has been duly verified and the same are at Exb. 8. The learned Advocates have submitted that in view of the settlement, a consent award be passed. I have gone through the terms of settlement and I have found that they are certainly in the interest of Party I-Workman and hence I accept the submissions made by the learned Advocates for both the sides and pass the following consent award in terms of Exb.8.

ORDER

In view of the settlement at Exb.8, the following consent award is hereby passed.

1. The Employer, Tarcar Automobiles Pvt. Ltd., agree to pay the workman Shri Barreto a lump sum of Rs. 5,000/- (Rupees Five Thousand only) towards full and final settlement of all the dues arising out of Shri Barreto's employment of items such as unclaimed wages leave, wages, notice pay and ex-gratia payment.

2. The workman, Shri Barreto agrees to accept the said amount as full and final dues from the employer and in consideration of the receipt, the said amount, agrees that his dispute with the employer regarding termination of services is fully settled.

3. The workman further agrees that now he has no dispute with the employer of whatsoever nature regarding his employment with them from 1-1-1987 till 12-6-1990 and that he has received all the dues.

4. The amount of Rs. 5000/- is being paid to Shri Barreto by means of a crossed account payee cheque No. 28679 drawn in favour of Shri Barreto on Panaji Branch of Goa State Coop. Bank Ltd.

5. No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/15/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Labour).

Panaji, 29th April, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI.

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/24/91

Shri Dhananjay K. Devidas, ... Workman/Party I

v/s

M/s A. G. Enterprises,
Good Luck Lottery Agency ... Employer/Party II

Workman represented by Adv. P. B. Devari.

Employer represented by Adv. B. G. Kamat.

Panaji, Dated: 18-3-93.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/15/91-LAB dated 25-4-1991 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s A. G. Enterprises, Good Luck Lottery Agency, Margao, in terminating the services of Shri Dhananjay K. Devidas, Cashier-Cum-Salesman, with effect from 1-1-1991 is legal and justified.

If not, what relief the workman is entitled to ?"

2. On receipt of this reference, a case at No. IT/24/91 was registered and notices were served to both the parties, in response to which, they appeared and submitted their pleadings.

3. Party I-Shri Dhananjay K. Devidas (hereinafter referred to as the workman) has filed his statement of claim (Exb. 5) wherein it has averred as follows:

Shri Dhananjay K. Devidas was serving with M/s A. G. Enterprises, Good Luck Lottery Agency, Margao (hereinafter referred to as the employer) from 7-4-1983. M/s A. G. Enterprises, Good Luck Lottery Agency, Margao is a proprietary concern and is selling lottery tickets of various States. However, Party II orally terminated the services of workman with effect from 1-1-91. After his termination the workman demanded reinstatement in the company but his request was not granted. Hence the workman complained to the Dy. Labour Commissioner. His complaint was admitted and the conciliation proceedings were started. However, as there was no settlement the Government was pleased to make reference to this Tribunal. The workman was serving as Cashier-Cum-Salesman and was in continuous service from 7-4-83 till his services were terminated on 1-1-91. The workman was an active member of the Gomantak Mazdoor Sangh (BMS). Party-II employer did not conduct any enquiry nor issued any letter of retrenchment and hence it has been alleged that principles of natural justice have been violated. The workman is still unemployed and hence, he has prayed that he should be reinstated in service with Party-II.

4. Party II by its written statement at Exb. 6 resisted the workman's plea contending interalia as follows:

M/s A. G. Enterprises and Good Luck Lottery Agency were two different concerns and at present M/s A. G. Enterprises is not in existence since last more than 2 years. It was a partnership with M/s Good Luck Lottery Agency. It has been contended that the workman was a mischievous person and was not honest and loyal in his service while he was working with Party II i. e. M/s A. G. Enterprises. He has committed misappropriation of the lottery money to the tune of Rs. 4646/- in the year 1990. He has also misappropriated and destroyed the lottery tickets worth Rs. 18,000/-. Hence, a police complaint was filed which is still pending. Inspite of his fault he was allowed to continue in service. However, thereafter the workman of his own accord and voluntarily abandoned the services. Hence. M/s. A. G. Enterprises had no other alternative but to employ another person in place of present workman. Hence, it has been contended that there is no substance in workman's case, to be deserved or dismissed.

5. Thereafter the workman filed rejoinder wherein he controverted the employer's contention and reiterated his claim made in his statement of claim.

6. On these pleadings I framed the following issues at Exb. 9:

1. Does Party No. I prove that the action of Party No. II in terminating his services is not legal and justified?
2. Does Party No. II prove that the Party No. I workman voluntarily abandoned his services as contended in Para 3 of its written statement?
3. Whether Party No. I workman is entitled to any relief?
4. What award or order ?

7. My findings on the above issues are as follows for the reasons stated below:

1. In the negative
2. Does Not survive for consideration
3. No
4. As per final order below.

REASONS

8. The respective contention of the parties to this dispute have been stated in the opening paragraph of this judgement, which need, further repetition.

9. Now in order to substantiate his claim, the workman has examined himself at Exb. 11, and he has also led the evidence of one more witness by name Shri G. A. Ghode at Exb. 15. On

behalf of Party No.2 Shri Shaikh Ahamed has examined himself at Exb. 16 and he has also produced the relevant documents.

10. Now the evidence of workman Shri D. K. Devidas reveals that he was engaged by the proprietor of M/s A. G. Enterprises which was a partnership firm. There were two partners of this firm namely Shri Shaikh Ahamed and Shri Gurunath Godge. This firm used to conduct lottery Centres at various places i.e. at Panaji, Margao and Mapusa. The workman has produced his letter of appointment (Exb. 12) which clearly shows that he was appointed with effect from 7-4-1983 on monthly salary of Rs. 175/-. Now this appointment letter has been signed by Shri Gurunath Godge on behalf of M/s A. G. Enterprises. It is also a common ground that the workman continued in service till end of 1990 after which, his services were terminated. On 1-1-1991 he was paid his salary for the month of December, 1990 and was asked to go. However, no letter of appointment was given to him. Thereafter, the workman states that he raised a dispute before the Labour Commissioner, but since there was no settlement, the present reference was made by the Government. This is, in substances, the evidence of the workman on the material called.

11. Now this workman has been searchingly cross examined by Shri Sukhthankar for Party No. II. The workman has admitted that his claim is against M/s A. G. Enterprises. However, he has denied that M/s A. G. Enterprises is not a firm. However, this is not true in as much as Party No. II has produced documentary evidence to prove that there was a partnership of two partners namely Shri Shaikh Ahamed and Shri Gurunath Godge. Exb. 17 is a xerox copy of an extract of the register, maintained under the Indian Partnership Act, which clearly shows that on 1-1-79 the firm was established in the name and style of M/s A. G. Enterprises at Vasco. There were two partners namely Shri Shaikh Ahamed and Gurunath Godge. This firm was conducting lottery centres known as Lucky Lottery Centres. This documentary evidence conclusively proves that there was partnership firm known as M/s A. G. Enterprises, which used to conduct lottery Centres in the name of Good Luck Lottery Centres. Now as stated earlier, when the firm was functioning, the present workman was employed by one of the partners as can be seen from Exb. 12, to which a reference has already been made . Now it is a case of Party No. II that firm M/s A. G. Enterprises has been dissolved since one of the partners, namely Shri G. Godge, retired from the partnership firm. This has been deposed to by Shri Shaikh Ahamed in his evidence at Exb. 16. He has stated that the firm was registered and to prove this, he has produced Exb. 17 which has already been referred to. He has stated that in December, 1989 Shri Godge retired from the partnership and as such, the firm was dissolved. There was no deed of dissolution of partnership. However, copy of notice at Exb. 18 sent by Shri G. Godge to Shri Shaikh Ahamed dated 24-7-89, has been produced, under which he was informed that he had already retired from the partnership business and had sent a notice to that effect on 21-1-88. This evidence clearly support the say of Shri Shaikh Ahamed when he states that partnership was dissolved in the year 1988-89. Now after the partnership was dissolved, Shri Godge started his business in the name of Mahalaxmi Lottery Agency at Margao, and Shaikh Ahamed continued with his own business in the name of Good Luck Lottery Agency at Margao. Thereafter he has stated that for some time, he allowed the present workman to work in his business, as he was an employee of M/s A. G. Enterprises which was an erstwhile firm. However, thereafter on 31-12-90 he told the workman that he had no work and asked him to go. Now there is absolutely nothing in the cross examination of Shri Shaikh Ahamed to dislodge his assertions made in his examination in chief. Moreover, what has been stated by Shri Shaikh Ahamed has been clearly borne out by documentary evidence at Exb. 17 and 18. I, therefore, hold that the present workman was employed in the firm, known as M /s A. G. Enterprises. After the firm was dissolved the two partners separated and Shaikh Ahamed continued with the business of Good Luck Lottery Centres. Now for some time, he had engaged present workman to work in his lottery centres since he was an ex-Employee of M/s A. G. Enterprises. No fresh letter of appointment was given by Shri Shaikh Ahamed to the present workman, and hence it has been rightly pointed out by Shri B. G. Kamat for Party No. II that the present workman continued to be an employee of M/s A. G. Enterprises. He has also invited my attention to the wording of reference made by the Government. The reference clearly calls upon this Tribunal to consider as to whether the action of M/s A. G. Enterprises, Good Luck Lottery Agency in terminating the services of Shri D. K. Devidas with effect from 1-1-91 is legal and justified. Thus issue that has been referred to the Tribunal is clear enough to indicate that the services of present workman were terminated by the management of M/s A. G. Enterprises. Now it is a common ground that the firm M/s A. G. Enterprises was not in existence when this reference was made. It came to be dissolved in the year 1988-89. Despite this state of affairs, the present workman was continued by Shri Shaikh Ahamed in his Good Luck Lottery Centres as he was an ex-employee of erstwhile firm known as M/s A. G. Enterprises. In view of the matter it has been rightly pointed out by Shri Kamat that the workman had a claim against the management of M/s A. G. Enterprises. However, the said firm is not in existance and Shri Shaikh Ahamed is not concerned with the present workman after dissolution of the partnership of firm. He has urged that the present workman was an employee of M/s A. G. Enterprises which was responsible for terminating the services of present workman, and not Shaikh Ahamed, who is the proprietor of M/s Good Luck Lottery Centres. To support his submission in this behalf, he has relied upon a ruling reported in A-I-R 1970, S. C. 823 (The manager M/s Pyarchand Kesarimal Porwal Bidi Factory, Appellant V/s Onkar Laxman Thenge and others). In the said case, the head note runs thus-

> "An Employer lends services of his employee to third person, the employee still continue to be in the employment of his employer and hence the third person cannot terminate the services of the employee."

12. Thus applying the ratio in the above referred ruling to the facts of the case, I find that argument advanced by Shri Kamat must be accepted. Shri Kamat also has relied upon one more ruling of the Rajasthan High Court, reported in F-L-R 1990 (61) 157 (Rajasthan Small Scale Industries Employees Union V/s State of Rajasthan) wherein it has been observed that a retrenchment can only be made in a running or continuing undertaking. It is not if the business is no more functioning. Thus applying this, principle to the facts of the instant case, it is clear that when the reference was made, M/s A. G.

Enterprises, which was a firm, was already dissolved and was not functioning, Hence, the workman's claim against the said firm does not survive for consideration. Moreover, as I stated earlier the services of the present workman were utilised by Shaikh Ahamed in his new business for some time, since he was an ex-employee of M/s A. G. Enterprises. However, since he did not require the services of the present workman, he asked him to go. However, the act of Shaikh Ahamed in discharging the present workman does not amount to retrenchment as laid down in Section 2 (00) of the Industrial Disputes Act, 1947, as observed by Rajasthan High Court in the above referred ruling.

13. Now it has been urged by Shri Devari that even Shaikh Ahamed has started his business in the said premises in which the firm was functioning and hence, there is no substance in the grievance made by Party No. II that the present workman was not in employment of Shaikh Ahamed. However, I do not find that there is any substance in this argument. It is needless to say that after dissolution of partnership firm, one of the partners generally start his own business in the same premises in which erstwhile firm was conducting its business. However, although the premise for the business are same still fact remains that the previous firm had already dissolved and hence, a new proprietary concern is not responsible for any claim made by the employees of erstwhile firm.

14. Thus considering the fact and circumstances of the case, I have come to the conclusion that the present workman has not succeeded in claiming any relief and hence, the present reference deserved to be dismissed. I, therefore, answer issue no. 1 in the negative. When issue no. 1 is answered in the negative, the Second issue does not survive for consideration. I, therefore, answer the same accordingly.

15. The result is the workman is not entitled for any relief and hence, I answer issue No. 3 accordingly and pass the following order:

ORDER

Party I- Shri D. K. Devidas is not entitled to any relief and hence, his claim stands dismissed, with no order as to costs.

Government be informed of this award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Labour Court

Order

No. 28/50/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Labour)

Panaji, 29th April, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/45/90

Shri Joseph Braganza ... Party No. I/Workman

v/s

M/s Hotel Fidalgo ... Party No. II/Employer

Workman represented by Adv. R. Mangeshkar

Employer represented by Adv. P. K. Lele

Panaji, Dated: 18-3-93

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa by its Order No. 28/50/90-LAB dated 26-9-1990 has referred the following issues for adjudication by this Tribunal.

2. On receipt of this reference a case No. IT/45/90 was registered and notices were issued to both the parties, in response to which, they appeared and submitted their pleadings. Party No. 1-Shri Joseph Braganza (hereinafter referred to as workman) has filed a statement of claim (Exb. 4) wherein it has been averred thus. Party No. II-M/s Hotel Fidalgo (hereinafter referred to as employer) as a Three Star hotel in the heart of a Panaji city.

This hotel has some of the facilities provided by Five Star hotels. The management of this hotel arranges regular tours for their customers to enable them to go for sight seeing. The customers are also picked up from air port. For that purpose the employer has a fleet of vehicles. Party No. I was appointed as driver w. e. f. 16-3-1981. The workman asserts that he had a clean record of service. However, on 7-3-88 the workman was charge sheeted for having committed misconduct like theft, misappropriations of master's property etc. The workman gave reply to the show cause notice, However, domestic enquiry was made against him, in which he was found guilty of the charge levelled against him. Hence, the management accepted the findings of the Enquiry Officer and eventually terminated the services of the workman. The workman raised a dispute before the Labour Commissioner but since there was no settlement the Government was pleased to refer this dispute for adjudication. Hence, the workman, prays that the order of termination be set aside and he should be reinstated in Service with other incidental reliefs.

3. The Workman's claim has been resisted by party No. II by its written statement at Exb. 6 wherein it has been denied that the workman had clean record of service as alleged by him. On the other hand, the workman was found to have committed serious mis conduct like theft, misappropriation of master's property etc, and hence, he was charge sheeted and domestic enquiry was held in which he was found guilty.

Hence, the management dismissed the workman from the services. It had been contended that the order of termination is perfectly legal and valid calls for no interference by this Tribunal.

4. Thereafter the workman filed a rejoinder (Exb. 10) wherein he controverted the contention of the employer and reiterated his claim made in his statement of claim.

5. On these pleadings, I frame the necessary issue at Exb. 11 and thereafter the matter was posted for hearing. However, on the adjourned date it was submitted that there was possibility of settling this dispute out of Court and accordingly, on 17-3-1993, both the parties appeared and submitted a settlement and requested the Tribunal to pass a Consent Award in terms of the settlement at Exb. 12. I have gone through the terms of the settlement and have found that the same are certainly in the interest of the workman. In view of the matter, I accept the submission made by learned Advocates for both sides, and pass the following Consent Award.

ORDER

In terms of the settlement at Exb. 12 the following Consent Award is hereby passed:

1. The management of Hotel Fidalgo agree to pay Shri J. Braganza a sum of Rs. 10,500/- (Rupees ten thousand five hundred only) towards full & final settlement of all the dues of Shri Joseph Braganza such as gratuity, leave wages, Notice Pay & Ex-gratia amount, etc.

2. In consideration of this good gesture of the Management, Shri J. Braganza agrees that his dispute with the Management in respect of termination of services is settled.

3.He further agrees that he has no dispute of whatsoever nature with the Management of Hotel Fidalgo in respect of his employment with them from 1981 till the date of discharge of his services.

4. Both parties agree to file this settlement in the Court of Industrial Tribunal requesting the Hon'ble Tribunal to give award in reference No. IT/45/90 in terms of this settlement.

5. The amount mentioned in Para (i) above has been paid by means of PAY ORDER No. 418364 drawn in favour of Shri J. Braganza on Oriental Bank of Commerce, Panaji.

No order as to costs.

Government be informed of this award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Labour Court

ORDER

No.28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Labour)

Panaji, 29th April, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/6/85

Shri Namdev S. Kubal ... Workman/Party I

V/s

M/s. Nav Gomantak Prakashan ... Employer/Party II

Workman represented by Adv. P. Nagvenkar.

Employer represented by Adv. L. Talaulikar.

Panaji, 22nd April, 1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. S. (1) of the S. 10 of the Industrial Disputes Act, 1947, the Lt.Governor of Goa, Daman and Diu by his order No. 28/52/84-ILD dated 21st January, 1985 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the employer, M/s Nav-Gomant Prakashan, (Daily Rashtramat), Margao, Salcete-Goa, in terminating the services of Shri Namdev S. Kubal, Compositor w. e. f. 7-4-1984 is legal and justified.

If not, to what relief the workman is entitled to?"

2. On receipt of this reference a case at No. IT/6/85 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Namdev S. Kubal (hereinafter called as the 'workman') has filed his statement of claim wherein he has averred as follows:

Party II/M/s Nav-Gomant Prakashan (Daily Rashtramat) (hereinafter called as the 'Employer') having its office at Borda, Margao, Goa, is a News Paper Establishment which publishes Daily Rashtramat from Margao since the last 30 years. Party I-workman is a Compositor having an experience of more than 25 years in the field of hand composing in Devnagari in the Printing Press of Party II. Before joining the services of Party II, the workman was serving as a Compositor with many Printing Presses in Goa and outside. From 11-4-79 the workman started serving as a 'Compositor' in the Press where Daily Rashtramat was published, on daily wages of Rs. 8/-. However, the Employer did not issue any appointment letter to the workman. On 17-6-91 Mr. Shripad Pandharinath Madkaikar, an Administration Manager called the workman in his Office and asked him to sign two pages which were in English. When the workman enquired about the contents of that letter he was told that, under that letter he was confirmed as 'Compositor' w. e. f. 1-5-1981 on a salary of Rs. 255/- per month and V. D. A. Although the workman signed in English, it is his grievance that he cannot understand English and hence they asked the Administration Manager to give him a copy of the said document or the said letter either in Marathi language or to permit him to take the said document to show to his English knowing friends. However, the Administration Manager turned down the workman's request saying that the employer would terminate the workman's services, if the workman showed unfaithfullness in him. Hence, the workman was required to sign that letter. On 5-11-1981 & 7-5-1982 the workman was again called by the Administration Manager who handed him some, letters. Party I accepted the same in good faith. Thereafter the workman approached the Union. The Secretary of the Union after reading all the documents/letters informed the workman that he was appointed as, 'Compositor Trainee' and that his services were only for six months on probation subject to extension and that the employer might terminate his services at any time. Hence the Union did not give him any membership after being informed as above, the workmen states that he received a mental shock. However, he approached the Administration Manager but he did not satisfy the workman. When the workman understood the real situation, he made several oral and written representations and requested for confirming him as 'Compositor'. However, his efforts failed. In the year 1980 the Central Government published the recommendations of the Tribunal Commonly known as Palekar Award. The said recommendations contained provisions for wage structure and other service conditions of the employees serving in the News Paper establishments in India which came into operation w. e. f. 1-10-80. The said Palekar award is applicable to the said establishment of Party II. Taking into consideration the applicability of Palekar award, the workman filed an application u/s 33-C (2) of the Industrial Disputes Act, claiming an amount of Rs. 9652.00 with 18% interest. The said application is pending in the Labour Court. In the first week of April, 1984, the workman was sick and unable to attend his duties. However, on 7-4-84 when he went to resume his duties, the Administration Manager asked him to sign one document but the workman refused as it was in English. He demanded a copy thereof, but his request was turned down and the Administration Manager ordered the workman not to work in the establishment as his services were terminated w.e.f. 7-4-1984. The workman received a mental shock on account of this order. On 12-4-1984 the workman went to his residential place at Margao where he received two A.D. Registered letters in respect of the termination of his services and a cheque of Rs. 1737.80 together with a statement of settlement of final account. On this state of affairs, it has been averred by the workman that the act of the Party II is illegal, perverse, and against the principles of natural justice. Hence, it has been prayed that the order of termination be set aside and Party II should be directed to reinstate the workman by giving him other incidental reliefs.

4. Party II-M/s Nav Gomant Prakashan by its written statement resisted the workman's claim contending interalia as follows:

It is true that the workman was employed w.e.f. 11-4-1979 but it is categorically denied that he was appointed as Compositor as averred by him. The workman was employed on daily wages of Rs. 8/- not as a Compositor but to do any miscellaneous work including manual work in general. When the workman was free from general manual work, he expressed his desire to learn composing and he was thus permitted at times to learn the composing under the guidance of the foreman from the Composing Department. It is true that no letter of appointment was issued to the workman as the same was not necesssary having regard to the nature of his appointment. It is denied that on 17-6-81 Shri Madkaiker called the workman in his office and forced him to sign any document. Infact, Mr. Madkaiker never stated orally or otherwise that the services of the workman were confirmed as 'compositor' since 1-5-1981 with a salary of Rs. 255/- plus V. D. A. It is denied that the workman does not understand English. It is denied that the workman signed the said letter under any coersion with a view to avoid his dismissal. Initially, the workman was employed w. e. f. 11-4-1979 on Rs.8/ as daily wages. Thereafter, he was taken as 'Compositor trainee' w.e.f. 1-5-1981 and was accordingly given a letter of appointment dated 17-8-81 wherein the terms and conditions of the appointment were clearly set out. However, the workman did not sign the duplicate of the said letter. However, the workman continued to be 'Compositor Trainee' and was being paid wages of Rs. 255/- plus V. D. A. On 5-11-81 and 7-5-82 the letters were issued to the workman under which his training period was extended. It is denied that thereafter the workman approached the Union where he was informed about the real state of affairs contained in the two letters. It is denied that thereafter the workman made oral and written representations and requested the employer to confirm him in service. As far as the contents of para. 7 and 8 of the claim statement are concerned it has been contended that the employer has filed the written statement in LCC/14/83, which is pending for final decision in the Labour Court. On these contentions, it has been submitted that the Order passed by the employer is perfectly legal and just and does not call for any interference by this Tribunal. Since the workman was just a Compositor trainee, it was not necessary to hold any

internal enquiry and hence it has been prayed that the workman's claim be rejected.

5. Thereafter Party I-Workman filed a rejoinder wherein he controverted the material contentions of Party II-Employer and reiterated his claim made in the statement of claim.

6. On these pleadings my learned Predecessor framed the necessary issues at Exb. 7.

1. Whether the employer proves that the termination of the services of the workman from 7-4-1984 is legal and justified?

2. Whether the employer proves that the workman was employed on 11-4-1979 not as Compositor but to do miscellaneous work including manual work in general, on daily wages of Rs. 8/- and when he was free, he was permitted to learn the composing under the guidance of the foreman. That, only with effect from 1-5-1981 he was taken as Compositor (Trainee)?

3. Whether the workman proves that he was employed on 11-4-1979 in the services of the employer in its Newspaper the daily 'Rashtramat' as a compositor on daily wages of Rs. 8/- ?

4. Whether the workman proves that the Administrative Manager of the employer got under threats the workman's signature on a 2 page document written in English, the contents of which were not explained to him?

5. Whether the workman proves that on 5-11-1981 and 7-2-1982, the Administrative Manager of the employer handed over to him 2 documents, letters which, when he got them read through the Secretary of the Union, he came to know that he was appointed as Compositor trainee under probation for 6 months which period could be extended ?

6. My findings on the above issues are as follows, for the reasons stated below:

1. In the affirmative.
2. In the affirmative.
3. In the negative.
4. In the negative.
5. In the negative.

REASONS

7. The respective contentions of the parties to this dispute have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, inorder to substantiate his claim, the workman has examined him self and he has also led the evidence of two more witnesses viz: Shri Harishchandra Bhogvekar and Shri Jayant Sambaji. On behalf of Party II-Employer three witnesses have been examined viz. Shri S. P. Madkaiker who is the Administrative Manager, Shri Y. Basavraj who is serving in the Accounts Section and Shri Gurudas Joshi who is serving as a Foreman. Both Parties have also produced the relevant documents. On considering the same in the light of the submissions made by the learned Advocates for both the sides, I now proceed to consider the main issue involved in this case. The first issue or perhaps the only issue that calls for determination is to find out whether Party I-Workman Shri Namdev Kubal was appointed as a Compositor as alleged by him or whether he was appointed as Trainee Compositor as urged by Party II-Employer. Now, it is a common ground that initially the workman was appointed as a daily labourer on payment of Rs. 8/- per day. Thereafter, he was appointed in the Composing Section. Now, there is a written appointment order which can be found at Exb. W-1 (colly). It is dated 17th August, 1981 and some of the portions of the said order needs to be reproduced. It reads thus:

DAILY RASHTRAMAT

27th August, 1982

Ref. No. SEC/NGP/301/09

SHRI N. V. KUBAL
Margao-Goa

Dear Sir,

We are pleased to offer you employment in our firm on the following terms and conditions:

(a)	Designation	:	Compositor Trainee
(b)	Stipend	:	Rs. 255/-
(c)	V.D.A.	:	As admissible

2. Your appointment will be effective from 1st May, 1981.

3. You will be a probationer until such time as you are confirmed by a letter of confirmation which will be subject to your satisfactory performance during your probationary period. Initially, the probationary period will be of six months but the same can be extended up to one year at the discretion of the Management.

4. During the probationary period, your services can be terminated on either side, without notice. After confirmation, your services are terminable, on either side, by one month's written notice or salary in lieu of notice.

5. ... ...
6. ... ...
7. ... ...
8. ... ...
9. ... ...
10. ... ...

11. The firm reserves to itself the right to terminate your appointment at any time without notice or compensation in lieu thereof should you be found guilty of breach of any of the conditions of your employment with us, inclusive of gross in subordination, insolence, neglect of duty, dishonesty, etc.

12 ... ...

Kindly return the duplicate copy of this letter duly signed, thereby indicating your acceptance of the above terms and conditions.

Yours faithfully,

For NAV - GOMANT PRAKASHAN

Sd/-

ADMINISTRATION MANAGER

Just below this letter, the workman has given in writing as follows:

I agree to accept employment with Nav-Gomant Prakashan in accordance with the terms & conditions set out above.

8. Now, on reading the aforesaid letters of appointment, it clearly seems to me that the workman was employed as a Compositor Trainee on a stipend of Rs. 255/-p.m. V. D. A., as admissible. Secondly, he was kept on probation and was to be confirmed by a letter of confirmation which could have been issued on his satisfactory performance during the probationary period. Thirdly, the probationary period was initially for six months but the same could be extended up to one year at the discretion of the management. Fourthly and most important condition in the letter of appointment was to the effect that during the probationary period the workman's services could be terminated on either side without notice. These are the relevant terms and conditions on which Shri Kubal accepted the job and continued the work till his services were terminated.

9. Now, as against this documentary evidence which is of clinching nature, a vigorous attempt has been on behalf of the workman to suggest that he was not a Compositor Trainee as designated in the order of appointment but he was a fullfledged Compositor. As attempt has also been made by the workman to suggest in his oral evidence that despite the clear and un-ambigous terms in the letter of appointment, the Manager had told him that he was appointed as a Compositor. Workman-Kubal in his evidence has also attempted to state that this letter of appointment issued by Shri Madkaiker was in English. He was not conversant with English and hence he got the letter read to him by somebody. When this letter was read the workman admits that he came to know that he was appointed as a Trainee Compositor so he contacted Shri Madkaikar and that time it is his say that Shri Madkaikar told him that he was appointed as a Compositor. He has further added that the Manager asked him to accept the letter of appointment or else he would lose the job. Now, the workman Kubal has been very searchingly cross examined by the learned advocate for the Employer and several suggestions have been put to him to suggest that Shri Madkaiker did not inform the workman that he was appointed as Compositor. The other two witnesses examined by the workman have also attempted to state that workman Kubal was appointed as a Compositor and that he had the sufficient experience of composing, since he had worked in other Printing Presses before he joined Party II. As against this evidence, Shri Madkaiker has categorically denied to have informed Kubal that he was appointed as a Compositor. He has stated that initially, the workman was taken as a daily workman he worked up to 30-4-81. No. letter of appointment was issued to the daily labourers. However, when he was appointed as a Trainee Compositor, he was issued a letter of appointment and on that post, he continued to work w.e.f. 1-5-1981. Now, whatever has been stated by Shri Madkaiker is borne dout by documentary evidence i. e. the letter of appointment which I have purposely reproduced above. As against the clear and unambiguous terms in the letter of appointment, the workman is attempting to lead evidence to contradict or to vary the terms of the document. This is certainly not permissible under the provisions laid down in S. 91 of the Evidence Act. The said Section lays down that, where the terms and conditions of any agreement/contract are reduced to writing and are clear and un-ambigous, the parties are not allowed to lead any oral evidence to contradict the terms of the document. In view of this clear provision laid down in S. 91 of the Evidence Act, I hold that the workman cannot be permitted to lead any oral evidence to contradict the material terms of a document namely the appointment letter. I, therefore, hold that all oral evidence led by the workman in this behalf will have to be rejected as being inadmissible.

10. Shri Nagvenkar for the workman no doubt, made strenuous efforts to emphasise his arguments that the oral evidence led on behalf of the workman is more than enough to substantiate his claim that he was appointed as a Compositor. He has taken me through the oral evidence led in this case as well as in the previous LC case to emphasise his argument that the said evidence supports the workman's contention. However, I have already pointed out that there is absolutely no documentary evidence to prove workman's contention in this behalf. Instead, the documentary evidence in the form of appointment order totally dislodges the workman's contention in this behalf. Moreover, as I have stated earlier, oral evidence of this nature is also not permissible in view of the clear provision laid down in S.91 of the Evidence Act. Thus for all these reasons, I hold that the workman has miserably failed to prove his allegation that he was not appointed as a Trainee Compositor but he was appointed as a Compositor and as such he was entitled to all the beneficial provisions laid down in the Industrial Disputes Act.

11. After having held as above, the next question that remains to be considered is what is the status of the workman in the employer's establishment. It may be recalled that the apppontment order itself prescribe a provision for employing the workman on probation. There is also a clause that the period of probation shall be extended in case if there is no satisfactory performance by the workman. Now, it is employer's contention that although the workman claimed that he has sufficient experience of doing the work of composing in his previous services, still he was not up to the mark when he entered the employer's service. Hence, from time to time, the tests were taken in which he did not fair well and hence he was issued with two letters under which the probationary period

was extended. Those two letters are dated 5-11-1981 and 7-5-1982. They are marked at Exb. W-1 (colly). Now, it is the grievance of the workman that he did not understand English and he was under an impression that he was a Compositor. However, he got the said letters read and explained to him from one of his friends and then he came to know that he was a Compositor Trainee.The evidence on record also discloses that he also endeavoured to obtain the membership of an Union but the same was denied as admitted by him, for want of confirmation as a Compositor in the Employer's establishment. This evidence clearly goes to show that after he showed three letters to his friend he was convinced that he was simply a Compositor Trainee and hence the Union did not make him a member. Inspite of this position the evidence on record discloses that the workman did not endeavour to contact the superior officers for clarifying his position in the Employer's establishment. His pay was also less than that of the other Compositor which fact, could have appraised him of his position that he was merely a Trainee and not a fullfledged Compositor. Dispite this state of affairs, he continued to work till he was given two more letters under which his period of probation was extended. Now, a serious attempt has been made by Shri Nagvenkar to emphasise that the subsequent two letters were not received by his client and instead they were prepared so to say, fabricated afterwards to suit the employer's stand. However, merely because the last two letters dated 4-11-82 and 5-5-83 did not bear the workman's signature still that circumstance would not go to fortify the suggestion made by Shri Nagvenkar in this behalf. Infact, there was no earthly reason for the management to concord or to fabricate false evidence especially when the workman was given two chances to show improvement in his performance of duty. If the management had any malafide intention to discharge the workman, it could have done it after the 2nd extension was given to the workman. However out of benevolent attitude, the management gave another extension as an opportunity to the workman to improve his efficiency. However, when it was found that there was no improvement, the management was constraint to issue two more letters dated 4-11-82 and 5-5-1983. There is one more circumstance to dislodge Shri Nagvenkar's submission in this behalf. On record, we have a report at Exb.6 which was made to the managing Partner and the same is dated 4-4-1984, which need to be reproduced. It is as follows:

4-4-1984.

Managing Partners

Re: Mr. N. V. Kubal.

Mr. Kubal was appointed as a Compositor trainee on 1-5-1981 on a monthly stipend of Rs. 255/- plus V. D. A. as admissible. During the initial training period of six months his performance was not found satisfactory. Hence, we extended his training period by further six months. His performance, however, did not improve during this period. Again we gave him two more extensions of one year duration each. His performance, however, did not show any sign of improvement even after giving him extension of further two years.

Now, lately we have observed his performance minutely and found that his performance of work is where it was 3 years ago. He was giving less than 150 lines of 11 ems before 3 years and today also he cannot go beyond that average. His performance sheet for 30th and 31st March will speak the truth. To qualify for the post of compositor one has to give 2,000 ems corrected during his one day's work, whereas Mr. Kubal could not give more than 1,400 ems per day.

We have given him sufficient time and maximum latitude to improve his performance and work output. We cannot increase the apprenticeship training beyond 3 yrs. as per rules.

Submitted for your decision.

12. After considering the said report, the employer made the following recommendations at the foot of Exb.6 which reads thus:

"In view of above, the appointment of Shri Kubal may be terminated and accounts settled. Notice pay can also be paid."

13. Now, in this report also, there is a clear reference that the probation was extended more than once but the workman did not show any improvement which could have satisfied the employer. Hence, the employer was constraint to terminate his services. Now, inspite of this report, it has been streneously urged by Shri Nagvenkar that his client's performance was quite satisfactory as recommended by his witnesses and hence the employer was not justified in terminating his services. However, I do not find that there is any substance in this submission. Although the workman's witnesses have attempted to state that the workman's performance was quite satisfactory, still the evidence led on behalf of the employer clearly reveal that the workman's performance was not at all satisfactory and he was not able to give a proper account of his work, as laid down in the Government Notification. Hence, reports were made by Foreman and relying on the same Exv. 6 was submitted, on the basis of which the final order of termination was passed. Now, when the Employer states that he was not satisfied with the workman's performance, there is no substance in the workman's own testimony supported by his witnesses, that his performance was quite good. It was the satisfaction of the master which has to be taken into account and not the servant's own assessment of his work. The evidence on record discloses that the management seems to have a desire to continue this workman in service and for that purpose his probation period was extended from time to time. However, inspite of sufficient opportunity given to the workman, he did not work to the satisfaction of his master and hence the management was constraint to discharge him by not extending his probation period. Thus, anxiously considering the oral and documentary evidence in the light of the submissions made by the learned Advocates for both the sides, I have come to an irresistable conclusion that workman Kubal was appointed as a Compositor Trainee and his probationary period was extended from time to time with a view to give an opportunity for him to improve his performance. However, when the employer found that there was no improvement in his efficiency, the management had to take a decision to retrench him. He was not confirmed as a Compositor and hence he continued to be on probation as contended by Shri Talaulikar for the Employer.

14. Now, it has been urged by Shri Nagvenkar for the workman, that the workman had worked for more than 240 days in a year without any break and as such he shall be deemed to have been confirmed in service and hence his retrenchment

without following the mandatory provisions is illegal. However, to controvert this argument, Shri Talaulikar has relied upon some authorities to which a reference will have to be made at this juncture.

15. The first authority relied upon by Shri Talaulikar is a Supreme Court ruling reported in AIR 1985 SC 603 (Dhanjibhai Ramjibhai v/s State of Gujarat). The head note 'B' & 'C' runs thus:

> 'B' - The power to extend the period of probation must not be confused with the manner in which the extension may be effected. The one relates to power, the other to more procedure. Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted."
>
> 'C" -There is no right in the probationer to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgement by the confirming authority on the overall suitability of the employee for permanent absorption in service.

There is no distinction between a probationer whose services are terminated on the expiry of the period of two years and a probationer, who has completed the normal span of two years and whose services are terminated some time later after he has put in a further period of service. It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach a definite conclusion on whether candidate should be confirmed or his services should be terminated. Such candidate may be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at a definite opinion. A candidate does not enjoy any greater right to confirmation if he is allowed to continue beyond the initial period of probation."

16. The above referred observations substantially support the submissions made by Shri Talaulikar in this behalf. Thus, it is evident that the position of the present workman, till his services were terminated, was that of a Trainee Compositor on probation.

17. Now, Shri Nagvenkar has urged that the observations in the above referred ruling are not applicable to the facts of the instant case. However, on anxiously considering his submissions in this behalf, I have found that the same are devoid of any merits. Shri Nagvenkar has also relied upon one ruling to which a reference will have to be made at this juncture. He has invited my attention to a ruling of Calcutta High Court reported in 1986 (I) Current Civil Cases 848 (G.K. Bhattacharya v/s C.S.T.C. & others). In that case, his Lordships was considering whether the petitioner-workman was deemed to be in service when he was issued a letter of termination after the completion of one year period of probation. This question was answered in the affirmative. However, the facts in the reported case are clearly distinguishable with the facts of the present case as can be seen from the head note appearing on page 849. The head note runs thus:

IMPORTANT POINT

Since the Corporation has allowed the one year probationary period without any extension thereof, in the case of petitioner, it cannot subsequently extend his probationary period, more so, by reason of an accrual of right under Regulation 17A of the Staff Regulation. A right conferred under the Regulation cannot be taken away by a mere administrative whim."

18. Hence I hold that the ruling relied upon by Shri Nagvenkar is of no assistance to him to support his client's case.

19. After having held as above, the next question that arises for determination is whether the order of retrenchment is illegal or void as claimed by the workman. Now, the evidence, on record discloses that the workman's services were terminated w.e.f.7-4-1984. That order in this behalf can be found at Exh. W-3 (colly). In that order also, it has been specifically that the workman was appointed as a Trainee Compositor w.e.f. 1-5-1991 on a monthly stipend of Rs. 255/- plus V.D.A. Inspite of extensions of training period up to 3 years his performance was not found to be satisfactory and up to the mark, in accordance with the norms of work prescribed by the notifications issued by Government of Goa, Daman and Diu and published in the Official Gazette dated 13-10-83. Hence, the management was constrained to discharge him as a Compositor Trainee w.e.f. 7-4-1984. All his legal dues as payable to him on account of his services rendered as Compositor Trainee up to 7-4-1984 aggragate amount thereof comes to Rs. 1737.80 as per the details given in the annexure namely the statement of final settlement of accounts. The payment was made by a cheque bearing No. 145351 drawn on the Bank of India. He was then directed to acknowledge this letter and pass the receipt. Thus, considering the above referred documentary evidence there can be absolutely no doubt to conclude that all the requirements of a retrenchment were duly complied with by the employer. Shri Talaulikar has also relied upon one more ruling of the Supreme Court reported in AIR 1993 SC 392 in the case of Governing Council of Kidwai Memorial Institute of Oncoloy, Bangalore v/s Dr. Pandurang Godwalkar and another wherein the head note runs thus;

> "If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an apportunity to show that the charge levelled against him is either not true ot it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before issuance of order of termination it really amounted to his removal from service on a charge, as such penal in nature."

20. Thus, in the instant case in as much as the workman was on probation when his services were terminated, it was not necessary for the employer to hold any enquiry by levelling any charge against him. His confirmation on the post was certainly depending upon his satisfactory performance. However, when it was found that he had not shown any improvement and there were enough extensions of probation,

the management rightly thought it fit to discharge him by giving him all the legal benefits as stated in the letter of termination.

21. Thus, after having anxiously considered the evidence on record in the light of the submissions made by the learned Advocates for both the sides I have come to an irresistable conclusion that the order of termination passed against the workman- Shri N. S. Kubal is perfectly legal and justified and hence he is not entitled to any relief whatsoever. In view of this conclusion, I answer the issues accordingly and pass the following order.

ORDER

It is hereby declared that the action of the Employer M/s Nav Gomantak Prakashan (Daily Rashtramat), Margao, Salcete-Goa in terminating the services of Shri Namdev S. Kubal, Compositor Trainee w.e.f. 7-4-1984 is perfectly legal and justified, and hence Party I-Workman is not entitled to any relief whatsoever.

No order as to costs. Inform the Government accordingly

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/52/91-LAB

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/48/89

Shri John Dias ... Workman /Party I

v/s

M/s Zuari Marine Industries
Private Limited,
Sancoale, Zuarinagar Goa ... Employer/Party II

Panaji, Dated: 7-5-1993

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/36/89-LAB dated July 26, 1989, have referred the following issues for adjudication by this Tribunal.

"Whether the action of the management of M/s Zuari Marine Industries Private Limited, Sancoale-Goa, in terminating the services of Shri John Dias, Helper with effect from 1-12-1988 is legal and justified ?

If not, to what relief the workman is entitled to ?"

2. On receipt of this reference, a case at No. IT/48/89 was registered and notices were sent to both the parties in response to which they appeared and submitted their pleadings.

3. Party 1 — Shri John Dias (hereinafter called as the workman) has filed his Statement of Claim at Exb. 2 wherein, he has averred as follows:

Party 2— M/s Zuari Marine Industries Pvt. Ltd., (hereinafter called as the Employer- Company) is a Naval Architects and Marine Engineers, which undertakes the work of manufacturing propellers of barges, fishing trawlers etc. The works of the Company are carried on at Sancoale, Zuarinagar, Goa. Initially, the company had employed 30 workers, who worked as Helpers, Millers, fitters, shappers, welders and Turners. Party 1 — Workman was appointed on 10-7-75 by Shri R. V. Nevrekar, who was the Director of the Employer-Company. He was first appointed as Helper w. e. f. 1-7-85 since the date of his appointment till his services were terminated. The workman states that he rendered his services quite dedicatedly and honestly and as such he had a clear record. However, under a letter dated 30-11-88, the workman was informed by the Director that he was discharged from services w. e. f. 1-12-88. It was stated in the said letter that having regard to the workman's behaviour in the factory premises on 29-11-88, the employer-Company, did not find him fit and suitable for further retention in service. Under a letter dated 5-12-88, the workman informed the Director that the allegation levelled against him was false. He even informed the Company that presuming that he has committed misconduct, still the employer was legally bound to issue him a Show Cause Notice and a Charge Sheet. A domestic inquiry ought to have been held for the proof of the alleged misconducts. Hence, the order of termination is arbitrary and as such illegal and void. Thus, the action of the employer is against the principles of natural justice and the same has also violated the Labour Laws. Alternatively, it has also been contended that the extreme penalty of dismissal was not called for and hence it has been prayed that the order of termination be set aside and the workman should be reinstated in service with other incidental relief.

4. Party 2— M/s Zuari Marine Industries Pvt. Limited, by its written statement at Exb. 3 resisted the workman's claim contending inter-alia as follows:

It is true that the workman was employed w.e.f. 10-7-75 and his services were terminated w.e.f. 30-11-88. However, it has been contended that the workman was discharged from services persuant to the incident which occurred on 29-11-88. The details of the said incident have been stated in the para 4 of the W. S. the substance of which is that, on 29-11-88 the workman behaved riotously and in most disgraceful or indecent manner by using abusive and threatening words to the Manager and by removing his pant and asking the Manager to remove his hair. This he did in the presence of male and female workers which caused a lot of commotion in the factory with the result that the Management thought it fit to immediately discharge him without holding any domestic inquiry as the workman had lost confidence of the employer. Thus, it has been contended that the workman was not discharged for misconduct but his

services were terminated for loss of confidence. Alongwith the letter of termination, his legal dues were offered to him but the workman refused to accept the same. The other dues, such as leave wages, bonus etc., were sent to him by postal order alongwith a letter of termination on 1-12-88. It has been denied that under this circumstances, it was obligatory upon the company to hold any enquiry since, the company took an action for loss of confidence. The punishment imposed upon the workman was commensurate with the mis-behaviour exhibited by the workman in the presence of several workers and hence it has been contended that the order of termination is well justified and calls for no interference by this Tribunal.

5. Thereafter, the workman filed a rejoinder at Exb. 4, wherein, he controverted all the contentions of party 2 and reiterated his claim made in Exb. 2.

6. On these pleadings, my Learned Predecessor Shri S. V. Nevagi framed the following issues at Exb. 5 :

1. Whether the management proves that the workman J. Dias behaved in a violent and undisciplined manner on 29th November, 1988 as stated in paras 4 & 5 of the written Statement ?

2. Whether the management proves that the act of the Party I-Workman amounted to loss of confidence and not misconduct as alleged in para 6 of the Written Statement ?

3. If so, whether the management proves that the employer-Company terminated the services of the workman by way of discharge and not by way of punishment after following the legal procedure and offering to pay the legal compensation as detailed in para 9 of the Written Statement ?

4. Whether the action of the management in terminating the services of Shri John Dias, Helper w. e. f. 1-12-88 is legal and justified in the circumstances of the case ?

5. If not, what reliefs, if any, the workman is entitled to in this case.

5. My findings on the above issues are as follows for the reasons stated below :

1. In the affirmative.

2. In the negative.

3. The Management terminated the services of the workman by way of punishment.

4. No

5. As stated in the last paragraph.

REASONS

6. The rival contentions of the parties to this dispute have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, in order to substantiate his claim Shri J. Dias has examined himself at Exb. 7 while on behalf of the Employer-Company two witnesses namely Shri R. V. Nevrekar and Shri K. Ismail. Shri R. V. Nevrekar is the Director and his evidence is at Exb. 13 while Shri K. Ismail's evidence is at Exb. 17. Both the parties have also filed the relevant documents. On considering the oral and documentary evidence in the light of the submissions made by Shri R. Mangueshkar for the workman and Shri B. G. Kamat for the Employer Company. I now proceed to consider the above referred issues framed in this case.

7. Now, some of the facts which are either admitted or which can be otherwise be taken as duly proved from the evidence on record need be stated in the beginning. Workman-John Dias in his evidence at Exb. 7 has stated that he was appointed as a Helper since 1975. The appointment letter given to him can be found at Exb. 8 which is dated 10th July, 1975. However, the workman commenced his services w.e.f. 1-7-1975. After the probationary period, he was confirmed as a Helper after which his services came to be terminated by a letter which can be found at Exb. 9. It is dated 30th Nov., 1988. Since the said letter has a considerable relevance in this case, it is absolutely essential to reproduce the same. It is thus:

ZUARI MARINE INDUSTRIES PVT. LTD.

Ref. ZMI/88-89/311/243 30th November, 1988
REGISTERED A/D
Mr. John Dias,
Fitter.

Sir,

Having regard to your misbehaviour in the premises of the factory on 29th November 1988, we do not find you fit or suitable for further retention in our employment.

Please therefore take notice that you are discharged from service with effect from 1st December, 1988.

You are hereby paid your final settlement dues.

Yours faithfully,

for ZUARI MARINE
INDUSTRIES PVT. LTD.

Sd/-
(R. V. NEVREKAR)
Director

Encl : Pay Order
No. 0839454 for Rs. 3165/-
drawn on Bank of Maharashtra,
Vasco-da-Gama.

8. Thereafter, the workman made a representation to the Director, a copy of which can be found at Exb. 10. Thereafter on 27-2-89 the workman sent one letter to the Manager which can be found at Exb. 12. It also needs to be reproduced, since it has some relevance in this case. It runs thus :

To,
The Manager,
Zuari Marine
Sancoale Ind. Estate,
Zuarinagar-Goa.

Sir,

With ref. to your letter No. ZMI/88-89/311/243 dated 30-11-88. I hereby realize my misbehaviour and would like to apologise for the same.

I also assure you that I will obey my seniors and behave normally in the premises.

I further hope that this apology would soon brighten my future prospects with your, good concern. Waiting for your prompt reply.

Thanking you in anticipation.

Yours Faithfully,

Sd/-
(Joaquim J. Dias)

9. However, the management did not consider the workman's representation and eventually the order of termination was confirmed, against which the workman raised a dispute before the Labour Commissioner but since there was a failure, as can be found from Exb. 11, the Government was required to refer this dispute for adjudication.

10. Now, the main grievance that has been made by Shri Raju Mangueshkar on behalf of the workman is in substance to the effect that the workman's services were terminated for the alleged misconduct which he committed on 29-11-88. He has urged that the evidence on record discloses that there are no standing orders of the Employer-Company which have been duly certified. A draft of the Standing Orders has now been produced at Exb. 16 However, Shri Nevrekar has stated that the said Standing Orders were not certified. When the Standing Orders were not certified it follows that the terms and conditions of service of the employees were governed by the Model Standing Orders. This position cannot be disputed. Under the Model Standing Orders, the alleged act no doubt amounts to misconduct for the proof of which a domestic enquiry was absolutely essential before passing the final order of termination. Now, even in the order of termination at Exb. 9, it has been clearly stated that the management found it not suitable to retain the workman in service for his misbehaviour (underlining is mine for emphasise). As against the clear recitals in Exb. 9, a streneous effort has been made by Shri B. G. Kamat to emphasise his argument that the employer was constrained to terminate the services of the workman for, 'Loss of Confidence'. On the footing of this submission, he has attempted to justify his client's inaction in not holding a domestic enquiry before the final order of termination was passed against the workman. To support his argument, Shri Kamat has also relied upon two rulings to which a reference will have to be made in brief. He has relied upon a ruling of Allahabad High Court reported in 1984 F. L. R. 96 (A. K. Home Chaudhary V/s National Textile Corp, U. P. Ltd. and others). In that case, it has been observed thus:

> "When a preliminary inquiry is held by the employer to ascertain the correctness of the allegations made against its employees and if thereafter it decides to terminate the services by simple order of termination without taking any disciplinary proceedings to punish the employee, the order of termination cannot be said to be punitive in nature. The form of the order is not conclusive to its true nature. The entirety of circumstances preceding or attendant on the impugned order must be examined by the court and the over-riding test will always be whether the misconduct is a mere motive or is the very foundation of the order. In the instant case, it is apparent that no punitive action was taken against the petitioner. The allegation relating to the petitioner's conduct was only a motive and not foundation."

11. A reliance has also been placed on a ruling of our High Court reported in 1988 LAB I. C. 1396 (Abdul Habib Khan v/s Maharashtra State Road Transport Corporation). In that case a simple order of termination was passed under regulation 61 for the reason of 'loss of confidence'. However, there was no proper compliance to the mandatory provisions of S. 25-F of the I. D. Act and hence the order of termination was set aside and the workman was directed to be reinstated but without back wages. I will consider the ratio of this ruling in the later part of this judgment. However, at this stage, it is enough for me to record my conclusion that the observations in the aforesaid two rulings are absolutely of no assistance to Shri Kamat for justifying the Employer's inaction in not holding a domestic enquiry.

12. Now, as stated earlier, a streneous effort has been made by the witnesses examined on behalf of the employer and also by Shri B. G. Kamat for the employer that the services of the workman were terminated not for any misconduct laid down in the Standing Orders but his services were terminated for, 'loss of confidence'. Now, at the outset, it will have to be stated that the services of the workman were terminated for, 'loss of confidence' is a mere cloak or a pretext under which the Employer-Company is justifying its action in terminating the workman's services. In the order of termination at Exb. 9 itself, there is absolutely no reference that the workman's services were terminated for, 'loss of confidence'. There is not even a whisper to any such allegation. Instead, it has been specifically stated that the workman was terminated for his misbehaviour, that is to say for misconduct. Now, what is meant by," loss of confidence" has been judicially recognised in several judgments of the Supreme Court as also of the other High Courts. Shri R. Mangueshkar has invited my attention to the Supreme Court's ruling in the case of L. Michael and another v/s M/s Kohnson Pumps India Ltd. In the head note, it has been held thus:

> "The Tribunal has power and, indeed, the duty to x-ray the order and discover its true nature, if the object and effect, of the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an envil to be eliminated. But if the management to cover up its inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be sent aside. Loss of confidence is no new armour for the management, otherwise, security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo-formula. Loss of confidence is the law will be the consequence of the loss of confidence doctrine. Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The court is concerned with that latter and not the former, although

circumstances, may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or a strategic position being abused, it may be a high risk to keep the employee once suspicion has started and a disciplinary enquiry cannot be forced on the matter. There, a termination simpliciter may be bona fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer."

13. Thus, bearing in mind the requirements of, 'loss of confidence', I now proceed to consider whether the employer has succeeded in substantiating his allegation. Now, it is almost a common ground that the present workman was employed as a Helper in the factory of Party II. As a helper, he could not have been entrusted with any work of confidence. Shri Nevrekar in his cross examination has also admitted, -"The workman was not handling any cash whereby I could have reposed trust in him." Thus, it is impossible to suscribe to the submission made on behalf of the employer that the workman was holding any post of trust and since he betrayed the same, the employer was constrained to discharge him for loss of confidence. Thus, it is evident that the employer has miserably failed to prove any 'loss of confidence' which could have enabled him to terminate the workman's services.

14. Once this position is accepted, then it follows that this workman was terminated on account of the misconduct or misbehaviour as it is called in the retrenchment order at Exb.9. Now, the alleged incident had taken place on 29-11-88. Shri Nevrekar in his evidence at Exb.13 has very graphically described the workman's misbehaviour. He has stated that on 29-11-88 one of the workers by name Laxman Sawant had spoiled the job and hence he was called by the Manager and fired. When Sawant went out some workers gathered. However, they left the place when they were directed to do so. However, thereafter, he has stated thus:

"However, John Dias remained and he removed his pants in the presence of female workers and many other workers and used filthy language against the Manager. He also thereatened to kill. He also abused referring to his mother. I was an eye witness to this."

He has been very searchingly cross examined by Shri Raju Mangueshkar but nothing favourable to the defence of the workman has been brought on record in his cross examination. I, therefore feel absolutely no hesitation in accepting the evidence of Shri Nevrekar for holding that this workman behaved not only riotiously but also in an indecent manner in the presence of several workers including females. Moreover, there is one more circumstance to support the employer's allegation in this behalf. Exb.12 is a letter of apology tendered by the workman to the Manager on 27-2-89, I have reproduced the same in this judgment and hence it need not be repeated. It clearly shows that the workman must had behaved in an indecent manner on 29-11-88. The workman has attempted to deny this letter. However, I do not find that there is any truth in his denial. In his cross examination, he has admitted his signature on Exb.12 and has also admitted that the same is in his handwriting. In view of this admission, it is impossible to conceive as to why he asserts that he cannot say how this document came into existence. I, therefore hold that, in view of Exb.12, the allegations made against the workman by the employer has been substantially proved and they clearly go to show that this workman was guilty of grave misconduct. Once the aforesaid conclusion is reached, the next question that remains for consideration is whether the order of termination on the ground of misconduct is well justified. Now, I have already pointed out that the provisions of Model Standing Orders are applicable in this case. The act proved against the workman undoubtedly amounts to misconduct. However, it is almost an common ground that no domestic enquiry was held against the workman and no show cause notice or a charge sheet was issued to him to have his say in the matter. Instead, all of a sudden, the management by its order at Exb.9 terminated the workman's services on the ground of misbehaviour. On this established state of affairs it follows that the order of termination will have to be struck down for want of any domestic enquiry and for not giving any opportunity to the delinquent to defend himself. I, therefore, hold that the order of termination is liable to be set aside and the necessary reliefs will have to be given to the workman.

15. Now, the position of law as regards the reliefs to which the workman is entitled to, after the order of termination is struck down, is now well settled by series of decisions. The normal rule is that the workman should be reinstated with full back wages. However, in certain cases, compensation in lieu of reinstatement has been found to be an adequate relief. To support this, a reference can usefully be made to a ruling of Supreme Court in the case of Chandual v/s The Management of M/s Pan American World Airways INC 1980 FLR 1180. Now, in the present case, the reinstatement is not possible in as much as the Employer's factory has been closed down w.e.f.30-7-91 on account of heavy losses. This has been deposed by Shri Nevrekar in his evidence at Exb. 13. Hence there is no possibility of reinstating the present workman. Hence, the next question that arises for consideration is what other reliefs can be granted to the workman. Now, if the factory was working then perhaps a direction could have been given to the employer to pay back wages. Shri Raju Mangueshkar has relied upon a ruling of the Supreme Court in the case of Ramakant Misra v/s State of U. P. and others, wherein it was found that where the workman was found guilty of misconduct in so far as he used language and made threatening posture though indiscrete, improper, and abusive language that would only show lack of culture but that would not justify the extreme penalty of dismissal. Instead the Supreme Court found that with holding of two increments would be an adequate punishment. A reference can also be made to a ruling of Our High Court in the case of Abdul Habib Khan v/s Maharashtra State Road Transport Corporation (Supra) which has been relied upon on behalf of the employer. In that case, the workman who was a Driver in M. S. R. TC, had pushed a Traffic controller who was standing on the heap of stones and received some injuries. On the proof of this misconduct, his lordships declined to award back wages by observing on page 1399 thus:

"The learned Labour Court has, however, taken a view that since he has found that the act of the petitioner in pushing the Traffic Controller is illegal, excessive and unwarranted, even if provoked, he should be deprived of back wages. In my view the discretion exercised by the learned Labour Court in this regard is sound and cannot be interfered with in my writ jurisdiction. The

above order of the learned Labour Court depriving the petitioner of back wages thus deserves to be upheld."

16. Thus, respectfully following the above referred views of the Supreme Court and also of Our High Court, I hold that in lieu of reinstatement and full back wages, some reasonable compensation would be given to the workman for the employer's fault in not holding a domestic enquiry against the workman. At the cost of repetition, I would say that if any domestic enquiry was held, the workman would have been certainly found guilty of a serious misconduct justifying the order of dismissal. However, on account of the employer's inaction in this behalf, I think that he should be penalised by directing him to pay some compensation to the workman. It will have also to be borne in mind that the employer has closed his factory on account of heavy financial losses and hence he is not in a position to bear a heavy burden on account of compensation. Besides, although there is no cogent evidence, still it cannot be lost sight of, that during the past years after his termination, the workman must have been gainfully employed somewhere without which he could not have pulled on. Now, the evidence on record discloses that the workman was entitled to receive his legal dues which have been quantified at Rs. 9077/- (Vide Exb. 15). The workman did not accept this amount though it was offered to him. Hence, he is entitled to this amount plus some compensation for illegal order of termination passed by the Employer. Thus, taking the overall view of the matter, I think that a net compensation of Rs. 15,000/-should be awarded to this workman for an illegal termination of his services. I, therefore answer the issues accordingly and pass the following order.

ORDER

It is hereby declared that the action of M/s Zuari Marine Industries Private Limited, Sancoale-Goa, in terminating the services of Shri John Dias, Helper, with effect from 1-12-1988 is not legal and justified, and hence the order of termination is hereby set aside.

2. The workman's prayer for reinstatement is hereby rejected.

3. Party II-Employer-M/s Zuari Marine Industries Private Limited, is hereby directed to pay a net compensation of Rs. 15,000/- (Rupees Fifteen Thousand Only) (Which is inclusive of the workman's legal dues at the time of termination) on or before 31st July, 1993, failing which the workman would be entitled to receive future interest at 12% on the aforesaid amount from 1st August, 1993 till the entire amount is realised.

4. No order as to costs. Government be informed accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 30th July, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

IT/93/89

Shri Pandurang Bhosale ...Workman/Party I

v/s

M/s Samant Marine Udyog ... Employer/Party II

Dated : 20-4-1993

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.the Government of Goa, by its order No. 28/59/88-LAB dated 28-12-1989 has referred the following issues for adjudication by this Tribunal:

"Whether the action of the management of M/s Samant Marine Udyog, Vasco da Gama, in terminating the services of their workman Shri Pandurang Bhosale, Welder, w.e.f. 19-2-1987 is legal and justified.

If not, to what relief the workman is entitled ?".

2. In receipt of this reference a case at No. IT/93/89 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings.

3. Party 1- Shri Pandurang Bhosale (hereinafter called as the workman) has filed his Statement of Claim at Exb. 3. Wherein it has been averred as follows"

Party 2 — M/s Samant Marine Udyog (hereinafter called as Employer — Company) is a manufacturing concern having its factory at Sancoale Industrial Estate in South Goa. The workman was employed in the said factory as a Welder, where he worked for about seven years. It is the case of the workman that he rendered his services quite faithfully and deligently to the satisfaction of his employer. During the tenure of his service, he had not received even a single memo. Before the workman joined

the services of party 2, he was employed by M/s Samant Shipyard Pvt. Limited as Welder. He started serving since 16-8-1976. However, in February 1981, there was a strike by employees which continued for about a month. The workman states that since he was loyal to the employer, he did not participate in the strike, hence, the employer transferred him to his sister concern viz. M/s Samant Marine Udyog w. e. f. 1-5-1981. However, in the year 1985, Shri S. V. Samant, who was controlling the affairs of party 2 informed the workman that there was no sufficient work for a Welder and hence there was some difficulty in making payment of Provident Fund. Thereafter, The workman requested the employer to pay his Provident fund dues already deposited with the Provident Fund Commissioner. However, the employer did not pay any heed to his request. Hence, the workman informed the concerned authorities of the Provident Fund Commissioner about this fact who inspected the records of the said concern at its factory and office. It is the case of the workman that this complaint in regard to the Provident fund enraged the employer with the result that he was served with a letter of termination dated 20-2-87. In the said letter it was stated that the workman's services were terminated w. e. f. 19-2-1987 due to the extreme financial difficulties of non availability of welding work. It has been alleged by the workman that the reason for his termination was not true. On the same day the workman was given a cheque for Rs. 12,909. 37 in full and final settlement of his claim under section 25 F of the I. D. Act. The workman alleges that there was a delay of one day in making payment for his dues u/s 25 F of the I. D. Act and hence, the order of termination is not legal and valid. After his termination, the workman raised a dispute before the employer and also before the Labour Commissioner. However, since there was no settlement, the Govt. was required to refer this dispute to this Tribunal for adjudication. The workman prays that, after setting aside the order of termination of his services, he should be reinstated with continuity of service and other benefits.

4. Party 2 — M/s Samant Marine Udyog, by its Written Statement at Exb. 5 resisted the workman's claim contending inter-alia as follows:

Party 2— is a small scale unit running a small engineering workshop and registered as such with small scale industries. It is true that the workman was employed as Welder and he served for seven years. However, it is denied that he was either faithful or deligent to his employer. On the other hand, he has participated in the strike of the employees for which he was given memos. It has been contended that the workman has voluntarily resigned his job in Samant Shipyard Pvt. Limited on account of his health w.e.f. 30-4-81. He was not infact transferred to party 2 and these two concerns are quite independent of each other. He was given a fresh job of welder in the factory of party 2. It is denied that the employer terminated the services of the workman because the workman had made a complaint to the Provident Fund Commissioner. On the other hand on account of non availability of work for a welder and on account of heavy losses suffered by the employer, he was constrained to discharge the present workman. The employer has also given lay offs to his employees on account of non-availability of work. It is true that the letter of termination was issued on 20-2-87. The accounts were settled, by mutual consultation between the workman and the employer and thereafter, on the same day a bearer cheque for a sum of Rs. 12,909.37 was given to the workman who accepted and encashed the same on 20-2-87. He accepted the cheque in full and final settlement of his claim. In fact, the workman worked on 19-2-87 for which he was paid and the order of termination was effective from 20-2-87. In the early morning on 20-2-87. the workman approached Mr. S. V. Samant at his residence and settled the account for which he was paid a cheque alongwith termination letter. Hence, it has been contended that the order of termination is perfectly legal and just and calls for no interference by this Tribunal. It is, therefore, prayed that the workman is not entitled to any relief whatsoever.

5. On these pleadings, I framed the following issues at Exb. 6:

ISSUES

1. Does party No. 1 prove that the order of termination passed against him by party No. II is not legal and just ?

2. Does he prove that he was not paid his legal dues on the same day on which his services were terminated and hence the order of retrenchment is bad in law ?

3. Whether Party No. I is entitled to any relief ?

4. What award or order ?

5. My findings on the above issues are as follows for the reasons stated below :

FINDINGS

1. In the negative.
2. In the negative.
3. Party 1 is not entitled to any relief.
4. As per final order below.

REASONS

6. The rival contentions of the parties to this dispute has been stated in the opening paragraphs of this judgment, which needs no further repetition. Now, in order to substantiate his claim, the workman — Shri Pandurang Bhosale has examined himself at Exb. 7 while on behalf of the employer, Shri S. V. Samant has led his own evidence at Exb. 30. Both the parties have produced the relevant documents. On considering the oral and documentary evidence in the light of arguments advanced by the learned advocates for both the parties, I now proceed to consider the main points involved in this case.

7. Now, it is a common ground that the present workman was previously serving as a Welder with M/s Samant Shipyard Pvt. Ltd. However, he resigned by his letter dated 30-4-81 as can be seen from his letter of resignation at Exb. 12. Thereafter, he was appointed as welder by party 2 and he started serving w. e. f. 1-5-81. The order of appointment can be found at Exb. 9. Thereafter, it is also a common ground that the services of the workman were terminated w. e. f. 20-2-87. The order of termination is at Exb. 10 and the same is dated 20-2-87. Now, the reasons assigned for the workman's termination was non-availability of

welding work. The evidence of Mr. Samant disclosed that there was no sufficient work and the concern had incurred losses and hence the employees were given layoffs on some occasions. The concern carried out the work of lathe for which the Welder's service were not required and hence under these circumstances, the employer was required to discharge the workman's services. The evidence on record does not disclose the workman's services were terminated because the employer was enraged by the workman's attitude in complaining to the authorities of the Provident Fund Commissioner. After having held as above, the only question that arise for determination is whether the order of termination is legal and just.

8. Now, Shri Nigalye, the learned advocate for the workman has streneously urged that the order of termination is not legal and valid since there was a delay of one day in making the payment of dues u/s 25 F of the I. D. Act. To emphasize his arguments in this behalf, he has invited my attention to the order of termination at Exb. 10. It is no doubt true that it is dated 20-2-87 and it states that the services of the workman were not required w. e. f. 19-2-87 due to the extreme financial losses and non-availability of welding work. The order further says that the workman's dues were fully paid by cheque No. 06997 for Rs. 12,909.37 drawn on Mapusa Urban Co-operative Bank, Vasco da Gama. Now, although in the order at Exb. 10., it has been stated the workman's services were not required w. e. f. 19-2-87, still the evidence on record discloses that he worked for full time in the shift on 19-2-87. Now, although the workman had denied this fact in his oral evidence, still there is documentary evidence to prove that he had worked on 19-2-87 and thereafter he did not visit the factory from 20-2-87. This fact has been borne out by documentary evidence at Exb. 11 which is a statement of settlement of dues. It clearly shows that the workman was paid salary for the month of February for 1-2-87 to 19-2-87.

Besides, Shri S. V. Samant has also stated that the workman rendered his services on 19-2-87 and he was retrenched from 20-2-87. Thereafter, it has been rightly pointed out by Shri S. Samant, the learned advocate for the employer that the termination was effective from 20-2-87 from which date the workman was discontinued in services. It has also been urged by Shri Samant that since the workman had worked on 19-2-87, it can be taken at the most that the services were terminated after office hours of 19-2-87. After Office hours on 19-2-87 is equivalent to before office hours of 20-2-87. At present A. O. H. and B. O. H. are termed as 'AN' and 'BN'. Thus it has been rightly pointed out by Shri Samant that the workman's services were terminated w. e. f. 20-2-87. The evidence on disclosed that the workman has approached the employer at his residence in the morning of 20-2-87 and at the same time he was given this letter at Exb. 10 alongwith a cheque in full and final settlement of his claim. The amount thus tendered, has not been challenged before me. On the other hand, the evidence on record disclose that the workman immediately encashed the cheque and received that amount from the bank as can be seen from a certificate at Exb. 14. The certificate has been issued by the Branch Manager of Mapusa Urban Co-operative Bank Ltd,. Vasco, which shows that the cheque in question for Rs. 12,909.37 was dated 19.2.87 which was credited in the bank account of Mr. Pandurang Bhosale, the present workman on 20-2-87. The workman has admitted to have encashed this cheque on the same day.

9. Thus the position comes to this. The workman was retrenched w. e. f. 20-2-87 and the cheque for his dues u/s 25F of the I. D. Act were simultaneously given to him and he actually received the sum by encashing the same. Now it is, indeed, needless to say that offer or tender of dues by a cheque is a proper compliance to the provision laid down in section 25 F of the I. D. Act. Thus, in this case, the order of termination dated 20-2-87 was issued along with a cheque for the workman's legal dues, which was accepted by the workman who received his legal dues on the same day i. e. 20-2-87. It is on this established state of affairs, it is not possible to suscribe to the submission made by Shri Nigalye that the order of termination is bad in law because there was a delay of one day in making payment of the legal dues u/s 25F of the IDA. To support his submission in this behalf, Shri Nigalye has relied upon a ruling of the single Judge of the Madras High Court in the case of R. Sankaran v/s The Presiding Officer, Additional Labour Court Madras reported in 1977 Lab. IC 1338. In that case, it has been held that section 25 F was violated because the retrenchment compensation was paid by a cheque on the same day but after the banking hours. The view taken in this case did not find favour with the Division Bench of the same High Court which over ruled this decision. In a subsequent ruling reported in 1977 FLR, 403 (Management of Industrial Chemicals Ltd., Madras, v/s Presiding Officer, Labour Court, Madras and other). It has been held thus:

> "We therefore, hold that the passing of the cheque by company in favour of Sankaran on June 23, 1970, was an effective payment of compensation at that very moment of time, which was also the movement of retrenchment. and hence in compliance with the terms of Sec. 25-F of the Industrial Disputes Act".
>
> (vide page 175 of 1993 FLR in the case of Automobiles Co-operative Workshop Ltd., Jodhpur, v/s Jethmal Agarwal & Anr).

10. In view of the matter, it follows that the observations made in an over ruled ruling in the case of R. Sankaran (Supra) are of no assistance to Shri Nigalye for emphasizing his arguments. Shri Nigalye has also relied upon one more ruling of Rajasthan High Court reported in 1985 Lab, IC 480 (Rajasthan State Road Transport Corporation v/s Judge, Labour Court, Jaipur & Anr). In that case, it has been observed that if the dues payable under section 25-F, of the I.D.A. are not tendered before or at the time of retrenchment. The retrenchment is invalid. However, this case has been distinguished by the same High Court in the subsequent ruling reported in 1993 FLR, 193 (Automobile Co-operative Workshop Ltd., Jodhpur v/s Jethmal Agarwal & Anr) (Supra) and in the same case it has been held as follows:-

> "Once a termination order has passed accompanied with the correct amount of compensation in cheque is a valid tender. The cheque is a valid tender simply because the cheque cannot be encashed on that very day when the termination was affected that will not change the situation that the amount is not paid simultaneously. Simply because that the cheque could not be encashed at 2.00 p.m. from that it cannot be said that the amount was not simultaneous. Sometimes difficulties can arise on account of making the cash payment, therefore, the cheque can be treated to be a valid tender".

11. Thus respectfully following the above referred views as applicable to the facts of the instant case, I hold that the workman was really retrenched on 20-2-87 B.M. and as such, before he was retrenched, he was given a cheque for all his legal dues which he accepted in the morning. The cheque was previously drawn and hence it was dated 19.2.87. However, it was tendered or offered to the workman simultaneously alongwith the order of dated 20-2-87. The evidence on record further, reveals that on the same day, the workman ancashed that cheque which was credited in his bank account as can be seen from Exb.14.

12. In view of this established state of affairs, I hold that party 2-Employer had fully complied with the mandatory provision of Sec. 25-F of the I. D. Act and hence the order of termination is perfectly legal and valid. No other points have been urged by Shri Nigalye for challenging the legality of the order of termination. I, therefore, hold that the present workman was retrenched for want of work in the employer's concern by a valid order of termination and hence he is not entitled to any relief whatsoever. I, therefore, answer the issues accordingly and pass the following order.

ORDER

It is hereby declared that the order of terminating the services of party 1-Shri Pandurang Bhonsale, a Welder, passed by party 2-M/s Samant Marine Udyog, Vasco, is perfectly legal and justified and hence party 1-Workman is not entitled to any relief whatsoever.

No order as to cost.

Government be informed of that order.

Sd/-
(M.A. DHAVALE)
Presiding Officer
Industrial Tribunal.

Order

No. 28/Misc/Awards/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 18th August, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/32/88

Shri Shivaji D. Patil ... Party No. I

v/s

M/s Goa Shipyard Ltd. ... Party No. II

Workman represented by

Employer represented by

Dated:-5-4-1993.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/25/88 ILD dated 5-10-88 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Shipyard Ltd., Vasco-da-Gama, Goa in terminating the services of workman Shri Shivaji D. Patil, Asstt. Accountant with effect from 25-4-1987 is legal and justified.

If not, what relief the workman is entitled to?".

2. On receipt of this reference a case at No. IT/32/88 was registered and notices were sent to both the parties, in response to which, they appeared and submitted their pleadings.

3. Party No. 1, Shri Shivaji Patil (hereinafter referred to as workman) has filed a statement of claim (Exb.2) wherein it has been averred as thus:

4. The workman joined the service of Party No. II, M/s Goa Shipyard Limited (hereinafter referred to as employer) w.e.f. 7-8-1969 as U.D.C. and continued to work for about 8 years of service in Accounts Department. Thereafter he was promoted as Asstt. Accountant in the same Department. Thereafter, again he was promoted to the post of Cashier in the month of July, 1982. As a Cashier he had to perform several duties which he performed honestly and diligently. The workman used to handle lakhs of rupees every now and then by withdrawing from the bank. There was no complaint against him from any subordinate or superior officers. However, there was some mis-understanding between him and Shri S. Ramnathan who was In-charge of the cash section, and he was waiting for an opportunity to implicate the present workman so that he should be punished by an order of dismissal. Thereafter, there was some reshuffle of duties after 13-10-86 and Shri S. Ramnathan became the immediate superior of the present workman in place of Shri Gurudev Gaitonde who was the Jt. Manager (Fin.). Shri S. Ramnathan than directed the workman to handover all the duplicate keys of cash room, cash book as well

as iron safe and lockers. The workman complied with the directions given by Shri S. Ramnathan. He also gave the technical code word which would help Shri S. Ramnathan to unlock and lock the iron-safe. Thereafter, the workman continued with his usual work of disbursement of petty-cash payment, salaries etc. Hence, it is a case of the workman that Shri S. Ramnathan was responsible for shortage of cash which was found in surprise inspection. On 20-11-86 there was surprise checking of the cash which was found to be in deficiency; and when it was detected; the workman fainted and became unconscious, whereby he sustained injuries. It has been averred by the workman that duplicate keys used to be in possession of Shri S. Ramnathan, Asstt. Manager (Fin.) and hence, there was every possibility for him to open the safe as well as petty-cash box. No body had an access to the safe as well as to the cash box and hence, no body could have committed theft or mis-appropriation of the cash. It is workman's case that he was known as an honest person and hence, the management should not have asked him to give any explanation on shortage of cash. It is the grievance of the workman that Shri S. Ramnathan attempted to treat him and make him scapegoat under the pretext of alleged shortage of cash. After the cash was checked, an amount of Rs. 63,699.23 was found short and hence, the workman was suspended pending enquiry. He was issued show cause notice alleging that he had committed theft, fraud and dishonesty. As provided under clause 29 (IV) and (XII) of the Standing Orders of the Company. The workman could not submit his explanation as he was hospitalised and after he was discharged from the hospital he filed detailed explanation dated 26-11-86 under which he denied all the allegations made against him. Thereafter, he was charge sheeted and Domestic Enquiry was initiated against him. In the enquiry; statement 10 witnesses were recorded and 12 documents were produced. None of the union office bearers supported or helped the workman in his defence, and his request for representative was rejected by Inquiry Officer. After the inquiry was over, findings were submitted to the superior officers and the copy thereof was given to the workman, with a show cause notice. The workman gave detailed explanation dated 10-4-1987. He challenged the findings recorded by Inquiry Officer, and denied to have committed any theft or mis-appropriation of the employer's cash. He, therefore, claimed that he was not guilty of any misconducts. However, his explanation was not found satisfactory and consequently, his services were terminated with effect from 25-4-1987.

5. The workman has averred that Domestic Enquiry held against him is not fair and proper; for various reasons and that order of termination which is based on the report of the Inquiry Officer, is not legal and proper, and hence, the same should be set aside, and he should be reinstated by giving him the other incidental monetary benefits.

6. Party No. II-M/s Goa Shipyard Ltd. (hereinafter referred to as Employer) has resisted the workman's claim by its written statement at Exb. 3, wherein it has been contended as follows:

7. It is true that Party No. I-workman was employed as U.D.C. on 7-8-1969 and was confirmed on 7-8-1970. Thereafter, he was promoted to the post of Assistant Accountant from 1-1-1978 alongwith other candidates. Thereafter, on 1-7-1982 he was again promoted to the post of Cashier, and had worked in that post till his services were terminated. On 20-11-1986 Shri S. Ramnathan asst. Manager (Fin.) was scheduled to carry out verification of the cash in the custody of the workman, and accordingly, the workman was informed. At 10.30 a. m. the workman approached Shri Gaitonde, Jt. Manager (Fin.) and reported that there was shortage of cash, whereupon Shri Gaitonde instructed the workman to report the matter to Shri Ramnathan. The cash was verified on 19-11-96 and as per the books of account maintained by the workman, a cash balance of Rs. 1,78.966.11 was in custody of the workman. The said entry was verified and tellied by the superiors, and no shortage was reported either on 19-11-86 or earlier. Hence, when physical verification of the cash was taken around 3.30 p.m. in presence of the workman and Shri Gaitonde, S. Ramanathan and others found that the cash in hand of the workman should have been Rs. 1,70, 458-06. Instead, an amount of Rs. 1,06,758-77 was produced by the workman from his custody, and hence, it was found that there was shortage of Rs. 63,699-29. The safe custody of the cash was entirely in the hands of the present workman, and he had all the keys in his possession. Hence, the shortage of cash was entirely attributable to the present workman, and as such, he was guilty of mis-conduct as laid down in clause 29 (IV) and (XII) of the Certified Standing Orders of the employer's establishment. Thereafter, Domestic enquiry was conducted on the above referred charges in which the workman fully participated.

8. Thereafter, the Inquiry Officer submitted his findings dated 21-3-1987, in which he held charges levelled against the workman proved. The management accepted the findings recorded by the Inquiry Officer, and considering the gravity of the mis-conducts of which the workman was held guilty, he was issued a show cause notice dated 26-3-1987 to which the workman submitted an explanation dated 14-4-1987. However, his explanation was not found to be satisfactory and consequently, the workman came to be dismissed by an order dated 25-4-1987. It has been contended that it is for the workman to prove that the order of termination passed by the employer is not legal and valid. It is true that Party No. I, workman joined on 7-8-1969 and at the material time, he was Cashier in the Finance Department. It is denied that there was any mis-understanding between the workman and Shri S. Ramanathan as alleged in the statement of claim. On 3-10-1986 there was reshuffle in the Accounts Department, as a result of which, Shri S. Ramnathan was posted as Asstt. Manager (Fin.) and he was the immediate superior of the present workman. It was the practice followed in the Finance Department to verify the cash by the end of 31st March of every year. The account used to be audited, checked and finalised. There used to be also surprise checking of the cash. On 20-11-86 the cash was verified and shortage of Rs. 63,699.29 was found. However, it is denied that Shri S. Ramnathan was having the duplicate keys of safe, and safe locker at the material time. On the other hand, the workman was the only person having in his custody the cash and the cash box. It is denied that Shri S. Ramanathan had any grudge against the workman and that he was after finding out an opportunity to trap the present workman, as alleged by him. Thereafter, on 20-11-86 the General Manager (Fin.) appointed a Committee to go into the details of the account books and cash in hand. On checking the cash books in detail, it was found, that besides wrong posting of 0.6 paise on 3-11-86, Party No. I-workman had not done the posting of Rs. 50,000/- on three occasions; and of Rs. 70,000/- on the fourth occasion, on the dates on which the said amounts were withdrawn from the Banks. The said amount was totalling to Rs. 2,20,000/-. If has been contended that

non-posting of the said amounts on the date of the withdrawal from the Bank amounts to non-accounting of the said amounts which remained in the custody of the Cashier for several days. Hence, it is contended that the present workman, who was the Cashier at the material time, utilised the said amounts for his personal gain and thereby he was guilty of mis-appropriation and also defalcation of accounts. It is, denied that the workman had an unblemished past record. On the other hand, he was in the habit of mis-using the cash belonging to the employer for his own sake, without accounting the same in the cash book. However, in the past, his mis-conduct was not detected but the same was detected on 20-11-86, when the substantial cash of Rs. 63,699.29 was found short. It is submitted that in the Domestic Enquiry, the management examined 10 witnesses and produced 12 documents. The workman defended himself and he fully participated in the Enquiry Proceedings. The Inquiry Officer was fully convinced about the guilty of the workman, and hence, his findings; which were re-apraised by the management, were found to be correct; and hence, a show cause notice was issued to the workman under which his services were terminated. Hence, it has been contended that order of termination is perfectly legal and just and calls for no interference by this Tribunal. Hence, it has been prayed that the workman is not entitled to any relief of whatsoever.

9. Thereafter, Party No. I, workman filed an elaborate rejoinder (Exb. 4) wherein he controverted all the material contentions of the employer, and reiterated his claim made in his statement of claim.

10. On these pleadings my learned Predecessor (Shri S. V. Nevagi) framed the following issues at Exb. 6.

1. Whether party No. I, Shivaji D. Patil working as Asstt. Accountant was responsible for the shortage of Rs. 63,699.29 as stated in para. 5 of the Written Statement?

2. If so, whether this amounts to mis-conduct under clause No. 29 (IV) of Certified Standing Order of the Company?

3. If so, whether due and proper enquiry was conducted against the workman after filing the charge sheet and after receiving the findings of the Inquiry Officer the services of the workman were terminated as stated in para. 6 of the written statement?

4. If so, whether the action of the management of M/s Goa Shipyard Ltd. Vasco in terminating the services of the workman is legal and justified?

5. If not, what relief, if any is the workman entitled to?

NOTE:- Out of the above issues, issue no. 3 regarding domestic enquiry is treated as preliminary issue and the same would be heard first.

My findings on the above issues are as follows; for the reasons stated below:-

1. Yes
2. Yes
3. Yes
4. Yes
5. Workman is not entitled to any relief.

REASONS

11. The rival contentions of the parties of this dispute have been stated in the opening paragraphs of the judgement in extenso, and hence, they need no further repetition.

12. Now the roznama of this case clearly reveals that on account of various letches on the part of the workman, the case was protracted for a very long time. During the pendency of proceedings, the workman had engaged as many as three advocates, one after the another; but at the time of final hearing and arguments, the last advocate engaged by him was also absent, and no request for adjournment was made by the workman, who was present on the adjourned date. Shri P. J. Kamat, was representing Party No. II-employer, and he has filed a written argument at Exb. 11 on 2-3-1993. However, as observed above, since the advocate for the workman was absent on the final date, no written arguments have been filed on behalf of the workman. Besides, no oral evidence has been led in this case by Party No. I, and hence, Party No. II employer, also did not lead any oral evidence. However, on behalf of Party No. II-employer, written arguments have been filed and on considering the same, I now proceed to determine the above referred issues framed in this case.

13. Now, my learned Predecessor had ordered that issue No. 3 shall be treated as preliminary issue. Now the entire burden of proving that the Domestic Enquiry was not fair and proper, was obviously upon the workman, who had made a grievance in this behalf. However, the learned advocate for the workman had filed one application at Exb. 10, wherein it has been stated thus:

"Submitted by the 1st Party that the Preliminary issue regarding fairness and propriety of the enquiry is not pressed. Hence, the submission."

14. Thus considering the above referred application at Exb.10, it follows that the workman has no grievance to make in respect of fairness or propriety of the Domestic Enquiry held against him. In view of the matter, issue No. 3 will have to be answered in the affirmative.

15. In view of my findings on issue No. 3 it follows that fair and proper enquiry was held against the workman and hence, the only question that survives for consideration is whether the finding recorded by the Inquiry Officer are borne out by the evidence led before him. Now I have carefully gone through the records and proceedings of the Domestic Enquiry, which have been filed by Party No. II-employer. Now on behalf of the management, as many as eight witnesses were examined and the relevant documents relating to the charge were also produced. In substance the charge framed against the workman was that he mis-appropriated a sum of Rs. 63,699.29 which he had received and which was in his custody. This misconduct on the party of the workman was detected on the day on which the cash was checked and verified on 20-11-1986. Now the evidence given by the witnesses on behalf of the management clearly reveals that after the accounts books were checked on 19-11-86 there should

have been a balance of Rs. 1,78,966.11. However, when the cash in hand was checked, an amount of Rs. 1,06,758.77 was found and hence, there was a deficy of Rs. 63,699.29. Now the workman was unable to explain for the shortage of cash, and as such, the Inquiry Officer was thoroughly justified in arriving a conclusion that the workman, who was then serving as Cashier, had mis-appropriated or committed theft of the said amount belonging to the employer. Now the findings in this behalf is well borne out by oral and documentary evidence led before him. Besides, it has not been pointed out on behalf of the workman that the said findings of the Inquiry Officer is either purverse or against weight of evidence in enquiry. I have re-considered the entire evidence led in the enquiry, and have arrived at a conclusion that findings recorded by the Inquiry Officer are well justified, and call for no interference by this Tribunal.

16. In view of my conclusion in foregoing paragraphs, it is evident that the workman was found to have mis-appropriated a huge amount belonging to the employer. Besides, it was also found that on four previous dates, the workman had not accounted for huge sums like Rs. 50,000/- on three occasions, and Rs. 70,000/- on one occasion. These amounts were withdrawn from the Bank, but their postings were not made on the dates on which the cash was received in hand by the workman. The documentary evidence at page 26 in record and proceedings of the Inquiry shows the wrong posting detected by the Officers who verified a account. His report was produced before the Inquiry Officer which shows as follows:-

Self Cheque No.	Date of Withdrawal	Amount (Rs.)	Date of posting in cash book
994460	1.4.1986	50,000	29.4.1986
208699	6.5.1986	50,000	30.5.1986
167268	5.8.1986	50,000	28.8.1986
167422	2.9.1986	70,000	29.9.1986

17. Thus, considering the above referred evidence, I hold that the Inquiry Officer was perfectly justified in holding that the workman had committed mis-appropriation/theft of the huge amount exceeding to Rs. 60,000/- belonging to his master. This certainly is a serious mis-conduct which has been laid down in clause 29(IV) of the Certified Standing Orders of the employer's company. The evidence on record reveals that the police complaint was also lodged against the present workman in which after the investigation was over, the police submitted a charge sheet in the Court of Judicial Magistrate in which the workman-accused; has been charged under Section 409 of the Indian Penal Code, for having committed mis-appropriation of the sum of Rs. 63,699.29, belonging to the complainant. Shri P. J. Kamat was submitted that the case before the Magistrate has not been decided so far, and the same is still pending.

18. Thus, considering all these circumstances, I hold that the Party No. II-employer was fully justified in dismissing the workman after he was found guilty of the misconduct, laid down in the Certified Standing Orders. The workman had no valid defence to make against the proposed punishment, and hence, I hold that the order of termination is well deserved, and calls for no interference by this Tribunal. In view of the conclusion, I answer the issues accordingly and pass the following order:

ORDER

It is hereby ordered that the action of the management of M/s. Goa Shipyard Ltd. Vasco, Goa in terminating the services of workman-Shri Shivaji D. Patil, Asstt. Accountant with effect from 25.4.1987. is perfectly legal and justified, and hence, the workman is not entitled to any relief of whatsoever.

No order as to costs.

The Government be informed of this Award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Labour Court

Order

No. 28/Misc/Award/93-LAB

The following Award given by the Industrial Tribunal. Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa

V. G. Manerkar, Under Secretary (Labour).

Panaji, 19th August, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/14/89

Shri Agustino Furtado ...Workman/Party I

v/s

M/s. Penthouse Beach Resort ....Employer/Party II

Workman represented by Shri Subhas Naik.

Employer represented by Adv. M. A. Bandodkar.

Panaji, Dated: 30th April, 1993

AWARD

In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Govenment of Goa, by its order No. 28/51/88-ILD dated 10th Feb., 1989 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Penthouse Beach Resort, Colva in terminating the services of Shri Agustino Furtado, workman, with effect from 15-2-1989 is legal and justified?

If not, what relief the workman is entitled to?"

2. On receipt of this reference, a case at No. IT/14/89 was registered and notices were sent to both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Agustino Furtado (hereinafter called as the 'workman') has filed his statement of claim Exb. 2 wherein it has been averred as follows:

Party II-M/s Penthouse Beach Resort, Colva has opened on 22-10-1987 a new luxury hotel at the famous Colva beach near Margao Goa. The hotel caters to foreign as well as Indian tourists. The room rates of the hotel during peak season are between Rs. 500 to Rs. 800 for suite. When the hotel was opened about 25 workers were recruited. The present workman applied for one of the vacancies of the Hotel and ultimately he was selected and he started serving w.e.f. 22-10-87. Before the opening of the hotel, the present workman had also work for about 15 days, when he did some sundry work. The workman was appointed for the post of bell boy on a fixed salary of Rs. 300/- p.m. However, he was not given any letter of appointment, but he was told that he was appointed in permanent vacancy. The workman states that he worked honestly without giving any scope for any complaints and during the tenure of his service he was not issued any memos or charge sheet. On 16-2-88, when the workman reported for work at 11.00 a.m. he was not allowed to resume. When enquired as to why he was not allowed to resume he was told in the office to contact the Director at Margao. When the workman contacted the Director, he was told that his services were terminated w.e.f. 15-2-88 after office hours. He was given an order of termination dated 15-2-88. However, he was not given one month's notice nor pay in lieu thereof. In the said letter of termination certain allegations of misconduct were levelled against the workman. It was alleged that he was soliciting hotel guests unauthorisedly on 14th and 15th Feb., 1988 in contraversion of clause 17 of the service rules. Hence, his services were terminated. It is the workman's case that the allegations of misconduct are totally false and perhaps based on false information. The workman immediately replied the said letter on 17-2-88 in which he denied the charges levelled against him. He requested the management for an opportunity to be heard. However, the management did not hold any enquiry into the charges levelled against the workman. Hence the workman raised a dispute before the Labour Commissioner. However since there was no settlement, a failure report was submitted pursuant to which the Government was pleased to refer this dispute to this Tribunal. The workman therefore prays that the order of termination be set aside and he should be reinstated with other incidental reliefs.

4. Party II-M/s Penthouse Beach Resort, Colva, (hereinafter called as the 'Employer-Management') has filed a Written Statement at Exb. 3 wherein it has been contended as follows:

The present reference is not maintainable as Shri Augustino Furtado is not a workman as defined in Section 2 (s) of the I.D. Act. and hence this Court has no jurisdiction to try this case. Infact Shri A. Furtado was appointed as a bell boy on trial basis for a period of 3 months. However, during the period of 3 months. his performance was not found to be satisfactory for which he was orally informed. However, at the end of a period of 3 months, when he was told that his services will be terminated he prayed for a further extension of one month, which was granted with a condition that he should improve his work as well as his behaviour with the customers/guests or else his services would be terminated even before the end of the month. However, on 14th and 15th of Feb., 1988 it was found that he was soliciting with the hotel guests unauthorisedly, in contravention of clause 17 of service Rules. He was also found unauthorisedly roaming in the hotel premises at about 7.30 a. m. on 15-2-88. When asked about his presence, he was not in a position to give any satisfactory reply. Hence his services were terminated by a letter dated 15-2-88 which was served upon him on 16.2.88. Hence, it has been contended that since Shri A. Furtado was on trial period, he does not have any claim over the employment. Thereafter, Party II has denied all the material allegations made by Party I in his statement of claim and has contended that in view of the circumstances referred to above, it was not necessary to hold any enquiry or to give any opportunity to the workman in support of the charges levelled against him. Hence, it has been contended that the claim made by Party I deserves to be rejected.

5. Thereafter, Party I filed a rejoinder at Exb. 4 wherein he has contended that he is a workman as defined in S. 2 (s) of the I.D. Act and hence this Tribunal has jurisdiction to entertain and decide this dispute. He has contraverted all other contentions taken by the employer and has reiterated his claim made in Exb. 2.

6. On these pleadings, my learned Predecessor Shri S. V. Nevagi, framed the following issues at Exb. 5.

1. Whether the appointment of Party I was on a trial basis for 3 months w.e.f. 22.10.87 and the same was extended further by one month as alleged?

2. If so, whether the management of Party II was within its rights in terminating the services of the workman for misbehaviour on the ground of soliciting customers as alleged?

3. Whether no show cause notice or a departmental enquiry were necessary as the workman had not acquired any lien or right to remain in service as contended in para. 5 of the Written Statement?

4. Whether the order of termination is just and legal and the same does not call for any interference?

5. What relief, If any, is the workman entitled to?

7. My findings on the above issues are as follows for the reasons stated below.

1. Yes.
2. Yes.
3. No.
4. Yes.
5. As per final order below.

REASONS

8. In order to substantiate his claim, the workman Shri Augustino Furtado has examined himself at Exb. 6 while on behalf of Party II its Director by name George Edwin D'Souza has been examined at Exb. 14. Both the parties have also produced the relevant documents. On considering the same, in the light of the submissions made by the learned Advocates for both the sides, I now proceed to consider the several issues framed in this case.

9. Now, the evidence of the workman discloses that he was appointed as a bell boy since 20.10.87. He has stated that he was appointed on the very day on which the hotel started its business. However, about a fortnight before, he was also employed for doing some sundry work. He has stated that he was not given any letter of appointment as such and his salary was fixed at 300/- p.m. However, he has stated that on 16.2.88 when he went to resume his duties he was not allowed to resume and finally he was given an order of termination which can be found at Exb. 8. Thereafter, he made a complaint to the Labour Commissioner after which the Government was pleased to refer this dispute for adjudication. In his cross examination, he has admitted that before joining his services, he had submitted an application in writing which can be found at Exb. 10-E. He has also admitted that in all, he worked only for 117 days. Now, he has denied the suggestion that he was initially appointed on trial basis and thereafter at his request, the period was extended by one month. However, before that extended period expired, he came to be discharged on 16.2.88. Now, although the workman has attempted to deny that he was not appointed on trial basis, still the oral and documentary evidence led by the Employer is more than enough to dislodge the workman's assertions in this behalf. Shri G.E. D' Souza is one of the Directors of Party II who in his evidence at Exb. 14 has stated that the workman had applied for an employment by his application at Exb. 10. His application was recommended by Shri Monteiro and hence he passed an order appointing the workman on 'trial basis' for 3 months. Now, whatever has been stated by Mr. D'Souza is substantially borne out by the documentary evidence at Exb. 10, which is the original application submitted by the workman to the Personnel Manager of Party II. In his application, he has given his biodata and have requested that he should be given a chance to serve in the employer's Hotel. On this application, Shri D'Souza has passed the following order:-"Bell boy-trial period-three months".

10. In view of this documentary evidence, I hold that the workman is not stating the truth when he alleges that he was not appointed on trial basis. The evidence of Shri D'Souza further reveals that after a period of 3 months was over, during which period his performance was not found to be satisfactory, the employer thought that the workman was no more required. However, the workman requested for extension by saying that he would improve and hence he was given an extension of one month. Now, whatever has been stated by D'Souza is fully borne out by his order below Exb. 10. He has passed the following order;

"Performance not satisfactory. Trial period extended for a period of one month at the request of Shri Furtado."

Sd/-
20.1.1988

11. Thus, on reading this oral and documentary evidence, it is absolutely clear that the workman was employed on trial basis or so to say on probation for a period of 3 months in the beginning. However, during this period his performance was not found to be satisfactory but even then at the workman's request, he was given one more chance to improve his work by extending the period of his service by one year. Thus, it is an established fact that the workman's services were terminated when he was on trial basis or so to say on probation. His services were terminated even before the extended period of probation had not expired. It is on this established state of affairs, I now proceed to consider whether the order of termination passed against him is legal or otherwise.

12. Now, it has been urged by Shri Subhas Naik that the order of termination is not legal and valid because the workman was not given any show cause notice, nor a charge sheet and no domestic enquiry was held for the alleged misconduct of the workman. However, I do not find that there is any substance in this submission for which a reference will have to be made to the order of termination which is at Exb. 8. The concluding part of this order is thus:

"You are therefore informed that you are discharged forth with from your employment and relieved of your duties as on the 15-2-88 as your performance has been found to be unsatisfactory and subversive to discipline." (Underlining is mine for emphasis).

13. Now, although in the beginning of this order, some act of misconduct has been alleged against the workman, still the concluding part of this order referred to above, clearly discloses that the motive or the main reason which prompted the employer to discharge the workman was his unsatisfactory performance during the period of probation. Once this position is accepted it follows that it was not necessary for the employer to hold any domestic enquiry by giving a charge sheet to the workman. Now, Shri S. Naik has attempted to rely upon some rulings of the Supreme Court reported in 1973 LAB IC 1587 (Management of Broke Bond India (Private) Ltd. V/s Y. K. Gautam) and 1978 LAB IC 1096 (The Municipal Corporation of Greater Bombay V. P. S. Malvenkar). In the said cases, it has been observed that even if the workman is on probation, still the Tribunal has to consider the fairness of the order of termination passed against the workman. Shri Bandodkar for the employer has rightly urged that the facts in the reported cases are clearly distinguishable with the facts of the present case and hence the observations made therein are of no assistance to Shri Subhas Naik. I find that there is substantial force in this submission. Moreover in the recent ruling of the Supreme Court reported in AIR 1985 S-C-603 (Dhanjibhai Ramjibhai v/s State of Gujarat) Their Lordships have considered the position of a probationer. The head note 'B' and 'C' runs thus:

'B'- The power to extend the period of probation must not be confused with the manner in which the extension may be

effected. The one relates to power, the other to mere procedure. Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted."

'C'- There is no right in the probationer to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service."

14. Thus, respectfully following the above referred observations as applicable to the instant case, I hold that no fault can be found with the employer in not issuing any show cause notice, charge sheet or holding any departmental enquiry into the misconducts or mis-behaviour of the workman. At the cost of repetition I would say that the clear and un-ambiguous wording of the order of termination clearly leads to a conclusion that the workman's services were terminated even before the extended period of probation had expired on account of un-satisfactory performance. In view of the matter I hold that the employer was perfectly justified in terminating the workman's services and as such the workman is not entitled to any relief whatsoever. At the fag end of this argument Shri Bandodkar has also submitted that the Employer has an information that this workman has left India and has gone to Gulf country for a job. Be it may as it is. the fact remains that the workman is not entitled to any relief and hence I pass the following order.

ORDER

It is hereby declared that the action of the management of M/s Penthouse Beach Resort, Colva, in terminating the services of Shri Augustino Furtado, workman, with effect from 15-2-1988 is perfectly legal and justified and hence the workman is not entitled to any relief whatsoever.

No order as to costs.

Government be informed accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

Order

No. 28/9/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary, (Industries and Labour).

Panaji, 24th October, 1994.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit Jairam Agni, Hon'ble Presiding Officer)

Ref. No. IT/71/94

Shri Paul D'Souza ... Workman/Party I

v/s

M/s Drogaria Salcete Margao Goa ...Employer/Party II

Workman represented by Shri P. Gaonkar

Employer represented by Adv. B. G. Kamat

Panaji Goa, Dated: 10.10.94

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22-4-94 bearing No. 28/9/94-LAB, referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Drogaria Salcete, Margao, in transferring Shri Paul A. D'Souza, Salesman-cum-Compounder from Margao to Mapusa is justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/71/94 and notices were issued to the parties. In pursuance to the said notices, the parties put in their appearance. The Party I (For short 'Workman') was represented by Shri P. Gaonkar, The General Secretary of Gomantak Mazdoor Sangh which represented the workman in this reference, and Party II (For short 'Employer') was represented by Adv. Shri B. G. Kamat. The case was fixed for hearing on 6-10-94 at 10.30 a.m. On the said date both the parties submitted that the dispute between the parties was settled and a copy of the memo of settlement dated 4-10-94 Exb. 4 was filed by both the parties alongwith an application praying that consent Award be passed in terms of the settlement.

3. I have gone through the terms of settlement filed by both the parties and I am satisfied that they are in the interest of the workman. I, therefore accept the submissions made by both the parties and pass the Consent Award in terms of the settlement dated 4-10-1994 Exb. 4.

Order

1. It is agreed between the parties that Shri Paulo D'Souza will submit a voluntary resignation letter and the management shall pay him the ex-gratia amount as below:

Compensation	... Rs. 32,054/-
Gratuity	... Rs. 32,054/-
Ex-Gratia.	.. Rs. 15,000/-

Earned Wages of January'93	... Rs. 794/-
Bonus for 92-93	... Rs. 1,146/-
Leave encashment of 55 days	... Rs. 2,763/-
	Gross ... Rs. 83,811/-

2. In view of the above payment paid to Shri Paulo D'Souza he has no claims of whatsoever nature against the management.

3. The above amount is paid by two cheques as under:

Cheque No.	Date	Amount Rs.	Bank
5969422	20-10-94	32,054/-	Canara Bank,Margao
505809	10-10-94	51,757/-	The Goa Urban Co-operative Bank Ltd., Margao.

No order as to cost.

Sd/-
(AJIT JAIRAM AGNI)
Presiding Officer,
Indusrial Tribunal.

Order

No. 28/13/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 12th January, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/70/94.

Workman Reps. Goa Milk Union
Employees Association. ... Workmen/Party I

v/s

M/s Goa State Co-operative
Milk Producers Union Ltd. ... Employer/Party II

Party I represented by Adv. A. Nigalye.

Party II represented by Adv. P. J. Kamat.

Panaji, Dated: 15-11-94.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20-4-94 bearing No. 28/13/94-LAB referred the following dispute for adjudication by this Tribunal.

(1) "Whether the demand raised by the Goa Milk Union Employees Association Ponda-Goa, before the management of M/s Goa State Co-operative Milk Producers Union Ltd., Ponda-Goa, in respect of Shri Kashi D. Naik, Laboratory Assistant, for applicability of pay scale of Rs. 1200-2040 with effect from 1-7-89 and in respect of S/Shri Chandrakant Gawade and Kashinath Naik, Electrician for applicability of the pay scale of Rs. 1320-2040 with effect from 1-1-86 and 1-5-87 respectively, is legal and justified?

(2) If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case under No. IT/17/94 was registered and notice was issued to both the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For Short, 'Union') was represented by Adv. A. Nigalye and the Party II (For Short, 'Employer') was represented by Adv. P. J. Kamat. On 5-10-94 when the case was fixed for hearing the parties submitted that the talk of settlement was in progress and prayed for time for filing settlement terms. Accordingly, the case was adjourned and fixed for filing terms of settlement on 4-11-94. On the said date, Adv. A. Nigalye appeared on behalf of the Union and Adv. P. J. Kamat appeared on behalf of the Employer. Both the parties filed a memo of settlement signed by the parties on 2-11-94 at Exb. 4. The Union and the Employer filed an application along with the Memo of settlement praying that the consent award be passed in terms of the settlement.

3. I have gone through the terms of the settlement and I am satisfied that the terms are in the interest of the workmen. I, therefore, accept the submissions made by both the parties and pass the consent award in terms of the settlement signed by the parties on 2-11-94 Exb. 4.

ORDER

1. It is agreed by and between the parties that the pay-scales of Shri Chandrakant Gaude, Electrician, shall be revised from Rs. 950-20-1150-EB-25-1400 to Rs. 1320-30-1560-EB-40--2040 with effect from 1-4-1988 and he shall be paid arrears of salary accordingly.

2. It is agreed by and between the parties that the pay-scales of Shri Kashinath D. Naik, Electrician, shall be revised from Rs. 950-20-1150-EB-25-1400 to Rs. 1320-30-1560-EB-40--2040 with effect from 1-1-1989 and he shall be paid arrears of salary accordingly.

3. It is further agreed by and between the parties that Shri Kashi D. Naik, Laboratory Assistant shall be given the pay scale of Rs. 1200-30-1560-EB-40-2040 with effect from 1-7-1990 and he shall be given arrears of salary accordingly.

4. It is agreed by and between the parties that Shri Honu Satarkar, Shri Ghanashyam Naik and Shri Ranganath Mahale shall be given five additional increments with effect from 1-4-1991 in the pay-scale of Rs. 825-1200 and they shall be paid arrears of salary accordingly.

5. It is agreed between the parties that on placement of the aforesaid workmen in the appropriate scales as stated hereinabove, they shall be given respective increments and other benefits applicable to their scales.

6. It is agreed between the parties that the arrears of salary and other benefits arising out of this settlement shall be paid to the said workman on or before 15-11-1994.

7. It is further agreed between the parties that the disputes of the said six workmen, namely S/Shri Chandrakant Gaude, Kashinath D. Naik, Kashi D. Naik, Honu Satarkar, Ghanashyam Naik and Ranganath Mahale with the management of Goa State Co-operative Milk Producers' Union Ltd., is conclusively settled.

8. It is agreed between the parties that the management shall give gifts of such value and of such articles as the management may decide to all employees covered under the payment of Bonus Act and such gifts shall be given before 2-11-1994.

9. It is further agreed by and between the parties that the issue relating to revision of pay-scales of Shri Hemant Sawant and Shri Santosh Panari will be discussed subsequently by the parties.

10. The parties hereby agree to file a copy of this settlement in the office of the Labour Commissioner, Government of Goa, as required under the provisions of the Industrial Disputes Act, 1947 and the Rules made thereunder.

No order as to costs. Inform the Government acordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No.28/66/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 17th January, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/92/89

Shri Ganesh Vishnu Gadekar,
Mapusa, Bardez-Goa. ... Workman/Party I

v/s

M/s Mapusa Consumer's Coop.
Society Ltd., ... Employer/Party II

Party I-Workman Represented by Adv. P. J. Kamat.

Party II-Employer Represented by Adv. G. K. Sardesai.

Panaji, Dated: 20-12-1994.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947), the Government of Goa, by order No. 28/66/89-LAB dated 28th Dec., 1989 referred the following dispute for adjudication by this Tribunal:

"Whether the action of the management of M/s The Mapusa Consumer's Co-op. Society Limited, Mapusa-Goa, in terminating the services of their workman Shri Ganesh V. Gadekar, with effect from 15-7-1989 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/92/89 and notice was duly issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I-Workman filed his statement of claim at Exb. 2. In the statement of claim the Party I-Workman stated that he was employed as a Weighmen by Party II_Employer w.e.f. 6-12-80 on monthly salary of Rs. 150/-. He was required to work in the store as well as the godown for the sale of cement. In the course of his duties, he constantly came in contact with cement for a long time as a result of which he suffered from skin disease due to allergy of cement. The said skin disease was diagnosed as Psoiasis. Party I-Workmen fell sick in December, 1988. He took treatment in Bombay as well as in Goa Medical Hospital, Panaji and he was declared fit by the department of Dermatology of the G.M.C. Hospital, Panaji on 16-6-89. The Party I-Workman accordingly, by letter dated 11-7-89 requested the employer to allow him to resume the work by 15-7-89. The Party II-Employer however, did not reply to the said letter nor to the reminder dated 7-8-89. Subsequently, the Party I-Workman received a letter dated 15-8-89 from the employer asking him to show cause why his services should not be terminated. The Party I-Workman replied to the said letter on 8.9.89 stating that the disease which he had suffered was neither contagious nor infectious as per the Medical Certificate issued by the Hospital. Inspite of the said letter and the certificate issued

by the G.M.C. Hospital, the employer did not allow him to join the duties and also did not pay full back wages to him. The contention of the Party I-Workman is that the termination of the services by the Party II-Employer amounts to retrenchment and as the employer has failed to comply with Sec. 25-F of the Industrial Disputes Act, the termination is illegal and hence he is entitled to reinstatement with full back wages and continuity in service.

3. The Party II-Employer filed written statement denying the contentions made by the Party I-Workman in the statement of claim. The Party II-Employer denied that the Party I was employed as a Weighman and stated that he was employed as a helper. The Party II-Employer further denied that the Pary I suffered skin disease on account of coming into contact and handling of cement for a long period as contended by Party I. The Party II stated that the Party I had contracted the disease much prior to the joining of service of the Party II. The Party II denied that the party I had informed about the sickness to the Party II. The Party II further stated that the certificate produced by the Party I dated 16-6-89 from Goa Medical College itself indicated that the Party I had been under treatment for skin disease and that the said disease could be controlled but cannot be cured. The Party II offered alternate employment to any one of the members of the family of Party I as the Party II was not in a position to allow him to work till the disease was completely cured. The Party II contended that the Party I had remained absent without leave for the purpose of taking treatment and there was no specific refusal of employment by the Party II. The Party II further contended that the refusal was on 8-9-89 and not earlier as contended by the Party I. The Party II also denied that Sec. 25-F of the I. D. Act, was attracted in the case or that the termination was illegal. The Party II contended that the termination of the employment of Party I was on account of continued ill health as the disease suffered by the Party I was incurable. The Party II denied that the Party I was entitled to any relief. Thereafter, the Party I-Workman filed rejoinder at Exb. 4 controverting the pleadings made by the Party II in the written statement. After the issues were framed at Exb. 5 evidence of the parties was recorded which was common in LCC/31/89.

4. On 20-12-94 when the matter was fixed for hearing final arguments, the parties submitted to the Court that the matter between them was amicably settled and they filed a Memorandum of settlement at Exb. 7. The Parties prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement and I find that they are certainly in the interest of the Party I Workman. I, therefore, accept the submissions made the parties and pass the consent award in terms of the settlement dated 20-12-94 - Exb. 7.

ORDER

1. It is agreed between the parties that the Party II-Employer shall pay a sum of Rs. 26,000/- (Rupees twenty six thousand only) to the party I-Workman in full and final settlement of all his dues/claims.

2. It is agreed between the parties that in view of the payment of the above said amount of Rs. 26,000/- the party I Workman does not press for his reinstatement in service and that his matters are finally settled.

3. It is agreed between the parties that the sum agreed shall be paid in three instalments as follows:

Rs. 10,000/- shall be paid on or before 25-12-1994

Rs. 10,000/- shall be paid on or before 20-1-1994.

Rs. 06,000/- shall be paid on or before 20-2-1994.

4. The cheques in respect of the second and third instalments shall be deposited with the Advocate for the Party I with post-dated alongwith the cheque of the first instalment.

5. It is agreed between the parties that the Party I -Workman shall file an application in LCC/31/89 withdrawing the said matter as the same is finally settled in view of this settlement.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Labour Court.

Order

No. 28/17/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 21st February, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/37/93

Workmen

Rep. By: The General Secretary
All Goa General Employees Union
P. O. No. 90, Vasco-da-Gama ... Workmen/Party I

v/s

M/s Drogaria Menezes & Cia
P. B. No. 63,
Margao-Goa ... Employer/Party II

Workmen/Party I present in person

Employer/Party II represented by Adv. G. K. Sardessai

Panaji, Dated: 14-2-1995.

AWARD

1. In exercise of the powers conerred by clause (d) of Sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). the Government of Goa by order dated 21-4-1993 bearing No. 28/17/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Drogaria Menezes & Cia, Margao, in refusing to consider the following demands is legal & justified?

If not, to what relief the workmen are entitled?"

2. The schedule is appended with as many as 9 demands for (1) Pay scales (2) House Rent Allowances (3) Tea Allowances (4) Conveyance Allowance (5) Daily allowance (6) Cash Handling Allowance (7) Overtine Allowance (8) Leave and (9) Wage Revision w.e.f. 1.1.1991 for 3 years.

2. On receipt of the reference a case was registered under No. IT/37/93 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. On 15-9-94. when the case was fixed for filing of statement of claim by the Party I, an application was filed by the workmen duly signed by them stating that the workers of Party II had resigned from the membership of the Party I/ Union and that they had withdrawn the authority given to party I/Union to represent them in the reference. The workmen also stated that they did not desire to persue the reference. Adv. G. K. Sardessai representing Party II submitted on 17-10-94 that Party II did not desire to file any statement of claim on its behalf.

3. The demands mentioned in the reference were raised by the workers through their Union. However, after the reference was made to this Tribunal, the workers resigned from the membership of Party I/ Union and also withdrew the authority given to Party I/Union, and further filed an application dated 31-8-94 to this effect in this Tribunal, alongwith a copy of the notice addressed to Party I in that respect. In the said application, the workers themselves have stated that they did not desire to pursue their demands. The Party II also submitted that it did not desire to file its statement of claim. This being the position, it is established that the dispute does not exist and consequently the reference does not survive. In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute does not exist since the workmen do not desire to persue their demands.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28-56-90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 12th January, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/49/90

Shri Tulshidas Naik,
Rep. Gomantak Mazdoor Sangh ...Workman/Party I

V/s

M/s Goa Engg. Sales & Services,
30, Dharmanand Kossambi Bldg.,
Vasco-da-Gama. ... Employer/Party II

Party I represented by Adv. Guru Shirodkar.
Party II represented by Adv. A. Nigalye.

Panaji, Dated: 6-12-1994

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act. 14 of 1947), the Government of Goa by order No. 28/56/90-LAB dated 19th Oct., 1990 referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Engineering Sales and Services, Vasco-da-Gama, in terminating the services of Shri Tulshidas Naik, Mechanic, with effect from 17-4-1990 is legal and justified ?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/49/90 and registered A.D. notice was issued to both the parties. In pursuance to the receipt of the notice, both the parties put in their appearance. Party I (For Short, 'Union') filed statement of claim at Exb. 8. The case of the Union as pleaded in the statement of claim is that the

workman-Shri Tulshidas Naik was appointed as Service Engineer by the Party II (For short, 'Employer') with effect from 1st April, 1990. That the employer was irregular in payment of the salary of the workman and since his salary for the month of March, 1990 was not paid, the Union made demand on the employer to pay the salary for the said month to the workman. That when on 17-4-90 the workman went for his duty, he was asked to go on leave for one month and when the workman reported for duty again on 17-5-90, he was refused employment by the employer. Thereafter, the employer through their Advocate sent a legal notice dated 24-5-1990 to the workman levelling certain charges against him. The workman replied to the said notice by reply dated 16-6-90 denying the allegations. The Union contended that no charge sheet was issued to the workman and no enquiry was held in the alleged misconduct on the part of the workman. The Union therefore contended that the refusal of employment on the part of the employer amounted to illegal retrenchment and the workman was entitled to reinstatement with full back wages. The Employer filed the written statement at Exb. 10 raising various contentions including that this Tribunal has no jurisdiction to decide the dispute. The employer contended that the duties of the workman were of purely supervisory and managerial nature. That though the workman initially put in satisfactory performance, thereafter he started indulging in dishonest and fraudulent activities and acts prejudicial to the interests of the Employer. That on 17-4-90 the workman was found in the office of M/s Euraka Shipping Pvt. Ltd., collecting money from the said Company for the work he had done for said Company, and from 17-4-90 the workman did not attend his duties. That on enquiries, the employer learnt that the workman had started his private business in or about the year 1986. The business which the workman had started was that of the nature which was being carried out by the employer. That the workman had diverted the customers of the employer to himself and was also utilising the tools from the employer's workshop, without authority and knowledge of the employer. The employer contended that as a result of the above, the employer suffered in their business as well as there was financial loss. The employer denied that they had terminated the services of the workman and stated that infact the workman had abandoned the services. The employer further stated that they were ready and willing to employ the workman. The Union thereafter filed rejoinder at Exb. 11, controverting the pleadings made by the employer in their written statement.

3. After the issues were framed at Exb. 12 the case was posted for recording the evidence of the employer on preliminary issue. On 28.11.1994 when the case was fixed for hearing, the Union and the employer submitted that the matter between the parties was settled and filed the copy of the terms of the settlement dated 26-10-94 at Exb. 13 and prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the Union and the Employer and pass the consent award in terms of the settlement dated 26-10-94. Exb. 13. In the settlement, Employer is referred to as, 'The Party of the First Part', and the workman is referred to as, 'The Party of the Second Part'.

ORDER

1. The Workman Shri Tulshidas Naik has agreed to accept from the Employer a sum of Rs. 50,000/- (Rupees Fifty Thousand Only) towards full and final settlement of his dues and upon receipt of the said amount, the workman will not have any claim against the Employer of whatsoever nature.

2. The Employer has issued following cheques in favour of the workman towards payment of amount agreed above.

Date	Cheque No.	Bank	Amount
26-10-94	112164	Bank of Baroda, Margao	10,000/-
4-11-94	12228	Central Bank, Vasco	10,000/-
26-11-94	12229	- do -	10,000/-
26-12-94	12230	- do -	20,000/-
		Total Rs. ...	50,000/-

The Employer agrees to honour all above cheques on due dates and under no circumstances any of the above cheques will be dishonoured or payment stopped.

3. In view of the above settlement the Sp. Civil Suit No. 130/90 in the Court of The Civil Judge, Senior Division, at Vasco-da-Gama between the Employer and the Workman also stands settled and withdrawn. The Employer agrees to withdraw the case on or before the date of next hearing.

4. In view of the amicable settlement both the parties do not have any claim of whatsoever nature against each other.

There shall be no order as to costs. Government be informed.

Sd/-

(AJIT J. AGNI)
Presiding Officer,
Industrial Trabunal.

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order

No. 28/47/85-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 12th January, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/3/86

Workmen
Rep. by Goa Trade & Commercial
Workers' Union. ... Workmen/Party I

v/s

M/s M.S.B. Caculo & Associates
St. Ines, Panaji -Goa. ... Employer/Party II

Party I represented by Shri Subhas Naik.

Party II represented by Adv. G. K. Sardessai.

Panaji, Dated: 14-11-1994.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of Goa referred the following dispute for adjudication by this Tribunal, by order dated 8-1-1996 bearing No. 28/47/85-ILD.

"Whether the action of the management M/s M. S. B. Caculo & Associates, St. Inez, Panaji-Goa, in refusing to concede the Demands as listed in the Schedule annexed hereto, of the workmen represented through Goa Trade & Commercial Workers' Union are legal and justified?

If not, to what relief the workmen are entitled to?"

2. On receipt of the reference, the case was registered under No. IT/3/86 and regd. A. D. notice was issued to both the parties. In pursuance to the said notices, the parties put in their appearance. The Party I-Workmen (For short, 'Union') was represented by Shri Subhas Naik and the Party II-Employer (For short, 'Employer') was represented by Adv. Shri G. K. Sardessai. The schedule contain as many as XX (twenty) demands made by the union against the employer namely (i) Grades & Pay Scales, (ii) Flat Rise, (iii) Fitment, (iv) Seniority Increments, (v) Fixed Dearness allowance, (vi) Variable Dearness allowance, (vii) House Rent Allowance, (viii) Travelling Allowance, (ix) Washing Allowance, (x) Leave Travel Allowance, (xi) Bhatta, (xii) Night Shift Allowance, (xiii) Festival Advance, (xiv) Loan Facility, (xv) Change of Timing, (xvi) Leave Facilities, (xvii) Uniforms, Safety Shoes, Rain Coats, Rain Shoes etc, (xviii) Allotment of Work as per Designation, (xix) Discount & Credit on Goods bought from from the Caculos and (xx) Rest Rooms and Lockers. The Union filed its statement of claim at Exb. 3. In the statement of claim, the Union contended that the employer owns huge properties in the capital and in the other places in Goa. The Union further contended that the Employer owns many properties including paddy fields and sugarcane situated at Molcornem in Sanguem Taluka and other places in Goa, and further that the employer also owns other properties situated at Calangute, Nerul and Candolim. The Union also contended that the Employer owns a fleet of imported and Indian vehicles including trucks, luxury cars and other luxurious and expensive assets. The Union submitted charter of demands to the Employer and inspite of sending several reminders, the Employer did not take any interest in settling the charger of demands submitted by the Union. Since the Employer adopted negative tactics, the Union had no other alternative but to go on strike. Accordingly, the Union served notice on the employer intimating that the workmen of the employer would go on strike on 8-7-85. In pursuance to the said notice, the workmen went on strike on 8-7-85. Therefore, the Asst. Labour Commissioner called the Union as well as the Employer for discussion on the issue of charter of demands submitted by the Union. However, the Employer refused to take part in the proceedings. The conciliation proceedings before the Asst. Labour Commissioner were adjourned from time to time at the request of the Employer. On 12-8-85 when the matter was fixed before the Asst. Labour Commissioner, the Employer expressed its willingness to offer a reasonable amount towards interim relief pending final settlement on the charter of demands submitted by the Union and the Employer further stated that the quantum of interim relief would be decided in the near future and would be paid with retrospective effect. However, surprisingly by letter dated 5-9-85 the Employer informed the Asst. Labour Commissioner that the wages paid to the workmen were fair and proper and the question of discussions over the charter of demands does not arise and consequently the Empoyer declined to pay interim relief. The Union contended that due to the adameant attitude taken by the Employer the conciliation proceedings resulted in failure. It is the case of the Union that although the workmen have put in number of years of service their salaries have remained almost static and there was hardly any revision in their wage structure. In the statement of claim, the Union also gave the basis in support of the demands raised by them against the employer and stated that the workmen were entitled to revision in wages and that they are also entitled to other demands raised by them as they are fair, just and reasonable.

3. The Employer filed written statement which is at Exb. 4. In the written statement, the Employer resisted the demands and claims made by the Union. The Employer denied that it owns huge properties including that of paddy fields and sugarcane at Molcornem in Sanguem Taluka or the properties at Calangute Nerul and Candolim or at any other places in Goa. The Employer also denied that it owns a fleet of imported and Indian vehicles including trucks, luxury cars or luxurious and expensive assets as contented by the Union. The Employer stated that, since the inception in the year 1969 it was dealing with building of roads and bridges. However, on account of lack of work, it decided to close its business. Infact, in the year 1982 itself, the Employer wanted to close the business, but since it would have deprived the workmen the source of their livelihood and with the expectation that the business might improve, the Employer continued to maintain the workmen in the rolls, inspite of heavy financial burden. Subsequently, the Employer having realised that no purpose would be served by retaining the workmen on the rolls, it decided to close down the business, and infact the establishment of the Employer was closed effectively from 3rd July, 1986. The employer denied that the workmen were entitled to the demands made by them. The Employer contended that the question of

adjudication of charter of demands did not arise since the establishment of the Employer was effectively closed from 3rd July, 1986 and consequently, no relief could be granted to the Union. Thereafter, the Union filed rejoinder which is at Exb. 5. In the rejoinder, the Union denied that the establishment of the Employer was closed from 3-7-86. The Union reitereated and maintained what was pleaded by the Union in the statement of claim. Based on the pleadings of the parties issues were framed at Exb.6.

4. After the issues were framed, the evidence of the Union was partly recorded and the case was fixed for further evidence of the Union on 9-11-94. On the said date, the Employer filed an application stating that the establishment of the employer was closed w.e.f. 3-7-1986 after giving closure notice to the workmen. In the said application, the Employer also stated that all the legal dues of the workmen were paid in full and final settlement. The Employer therefore submitted that in view of the closure and settlement of the dues of the workmen, the reference did not survive. Shri S. Naik representing the Union admitted that the establishment of the Employer was closed w.e.f. 3rd July, 1986 and stated that he had no objection if the reference was disposed off. Shri S. Naik accordingly made an endorsement to that effect on the application dated 9-11-1994 filed by the Employer at Exb. 10.

Since the establishment of the Employer/Party II is closed permanently w.e.f. 3-7-1986 which fact is admitted by the Union, the dispute does not exist and consequently, the reference does not survive. Hence, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the permanent closure of the establishment of M/s M.S.B. Caculo & Associates, St. Inez, Panaji-Goa, w.e.f. 3rd July, 1986.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer.

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